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**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**WHEN:** Tuesday, September 11, 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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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1205

[Doc. #AMS-CN-11-0091]

#### Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations by increasing the value assigned to imported cotton for calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An amendment is required to adjust the assessments collected on imported cotton and the cotton content of imported products to be the same as those paid on domestically produced cotton. In addition, AMS is changing the Harmonized Tariff Schedule (HTS) statistical reporting numbers that were amended since the last assessment adjustment.

**DATES:** *Effective Date:* September 27, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361-2726, facsimile (540) 361-1199, or email at [Shethir.Riva@ams.usda.gov](mailto:Shethir.Riva@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

The Cotton Research and Promotion Act (7 U.S.C. 2101-2118) (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

#### Background

##### *Import Assessment*

Amendments to the Act were enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624, 104 Stat. 3909, November 28, 1990). These amendments contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The authority to assess imported cotton and cotton products; and (2) the termination of the right of cotton producers to demand a refund of assessments.

As amended, the Cotton Research and Promotion Order (7 CFR part 1205) (Order) was approved by cotton producers and importers voting in a referendum held July 17-26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This rule increases the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)). The total value of assessments levied is determined using a two-part assessment. The first part of the assessment is levied on the weight of cotton imported at a rate of \$1 per 500-pound bale of cotton or \$1 per 226.8 kilograms of cotton. The second part of the assessment—known as the supplemental assessment—is levied at a rate of  $\frac{5}{10}$  of one percent of the value of imported raw cotton or the cotton content of imported cotton-containing products. The supplemental assessment is combined with the per bale equivalent to determine the total value and assessment of the imported cotton or imported cotton-containing products.

Section 1205.510(b)(2) of the Cotton Research and Promotion Rules and Regulations provides for the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of domestically produced cotton, imported raw cotton and the cotton content of imported cotton-containing products. Use of the same weighted average price ensures that assessments paid on domestically produced cotton and assessments on imported cotton are the same. The source of price statistics is *Agricultural Prices*, a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture.

The current value of imported cotton as published in the **Federal Register** (76 FR 54078) for the purpose of calculating assessments on imported cotton is \$0.012665 per kilogram. Using the Average Weighted Price received by U.S. farmers for Upland cotton for the calendar year 2011, the new value of imported cotton is \$0.014109 per kilogram.

An example of the complete assessment formula and how the figures are obtained is as follows:

One bale is equal to 500 pounds.  
One kilogram equals 2.2046 pounds.  
One pound equals 0.453597 kilograms.

#### *One Dollar per Bale Assessment Converted to Kilograms*

A 500-pound bale equals 226.8 kg. (500 × .453597).

\$1 per bale assessment equals \$0.002000 per pound or \$0.2000 cents per pound (1/500) or \$0.004409 per kg. or \$0.4409 cents per kg. (1/226.8).

*Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms*

The 2011 calendar year weighted average price received by producers for Upland cotton is \$0.880 per pound or \$1.940 per kg. ( $0.880 \times 2.2046$ ).

$\frac{5}{10}$  of one percent of the average price in kg. equals \$0.009700 per kg. ( $1.940 \times .005$ ).

*Total Assessment*

The total assessment per kilogram of raw cotton is obtained by adding the \$1 per bale equivalent assessment of \$0.004409 per kg. and the supplemental assessment \$0.009700 per kg. which equals \$0.014109 per kg.

The current assessment on imported cotton is \$0.012665 per kilogram of imported cotton. The new assessment is \$0.014109, an increase of \$0.001444 per kilogram. This increase reflects the increase in the average weighted price of Upland Cotton Received by U.S. Farmers during the period January through December 2011. The Import Assessment Table in section 1205.510(b)(3) indicates the conversion factors used to estimate cotton equivalent quantities and the total assessment per kilogram due for each HTS number subject to assessment. Since the weighted average price of cotton that serves as the basis of the supplemental assessment calculation has changed, total assessment rates reported in this table have been revised.

**HTS Codes**

AMS also compared the current import assessment table with the U.S. International Trade Commission's (ITC) 2012 HTS and information from U.S. Customs and Border Protection and identified HTS statistical reporting numbers that have been updated and removed. In addition, AMS contacted USDA's Economic Research Service, who provided the updated cotton conversion factors for the new or updated HTS codes.

**Summary of Comments**

A proposed rule was published on June 12, 2012, with a comment period of June 12, 2012, through July 12, 2012 (77 FR 34855). AMS received three comments from interested organizations representing segments of the cotton or manufacturing industry. All comments received are available for public inspection at Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, during regular business hours. Comments may also be found at <http://www.regulations.gov>.

One commenter, who represents the national trade organization representing the U.S. raw cotton industry and its membership includes producers, inners, warehousemen, cottonseed crushers and dealers, private and cooperative merchants, and textile manufacturers, supported the proposed rule and the formula developed by the Food, Agriculture, Conservation and Trade Act of 1990. This commenter urged AMS to expeditiously implement the new rate in order to properly assess imported cotton and cotton containing products at the new rate.

Two other commenters did not support the increased assessment. One of the opposing commenters, who represents 200 retailers, product manufacturers, and service suppliers, questioned the need for another increase after the increase in 2011 and stated that this increase would further escalate costs and unfairly burden many companies within the cotton supply chain. This commenter cited that this increase combined with the 2011 increase would add an additional 30 percent to the fee that retailers pay for imported cotton, costing up to hundreds of thousands of dollars a year per company.

Section 1205.510, "Levy of assessments," provides "the rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States." In addition, section 1205.510 provides that the 12-month average of monthly weighted average prices received by U.S. farmers will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton. AMS used the 2011 price statistics found in *Agricultural Prices*, a publication of the National Agricultural Statistics Service of the Department of Agriculture, to calculate the average weighted price and convert it to arrive at the new rate of 1.4109 cents per kilogram. Therefore, AMS has made no changes to the proposed rule based on this comment.

The other opposing commenter, whose organization represents the entire spectrum of international trade across all industry sectors, stated its concern that the importer fee was paid into the U.S. Treasury where only a portion of the money collected is appropriated for its stated purpose. The commenter stated its belief that the balance of such funds is often used to offset budget deficits or designated for other uses. In addition, the commenter stated that it is difficult for companies to absorb any increased costs. No monies are transferred into the general fund of the U.S. Treasury. All funds collected by

the Board are used for the Cotton Research and Promotion Program in accordance with the Act. Assessments on domestic cotton production and cotton imports are maintained by the Cotton Board, who is charged with administering the Cotton Research and Promotion Program.

**Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (importers) as having receipts of no more than \$7,000,000. An estimated 13,000 importers are subject to the rules and regulations issued pursuant to the Cotton Research and Promotion Order. Most are considered small entities as defined by the Small Business Administration.

This final rule only affects importers of cotton and cotton-containing products, and it raises the assessments paid by the importers under the Cotton Research and Promotion Order. The current assessment on imported cotton is \$0.012665 per kilogram, which is equivalent to 1.088 cents per kilogram, of imported cotton. The new assessment is \$0.014109 which is equivalent to 1.4109 cents per kilogram and was calculated based on the 12-month average of monthly weighted average prices received by U.S. cotton farmers. Section 1205.510, "Levy of assessments," provides "the rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States." In addition, section 1205.510 provides that the 12-month average of monthly weighted average prices received by U.S. farmers will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton. AMS used the 2010 price statistics found in *Agricultural Prices*, a publication of the National Agricultural Statistics Service of the Department of Agriculture, to calculate the average weighted price and convert it to arrive at the new rate of 1.4109 cents per kilogram as detailed in the Background section.

Under the Cotton Research and Promotion Program, assessments are used by the Cotton Board to finance

research and promotion programs designed to increase consumer demand for Upland cotton within the United States and international markets. In 2010 (the last audited year), producer assessments totaled \$46.5 million and importer assessments totaled \$38.1 million. According to the Cotton Board, should the volume of cotton products imported into the U.S. remain at the same level in 2011, one could expect the increased assessment to generate approximately \$8,309,158 in additional revenue.

Importers with line-items appearing on U.S. Customs and Border Protection documentation with value of the cotton contained therein results of an assessment of two dollars (\$2.00) or less will not be subject to assessments. In addition, imported cotton and products may be exempt from assessment if the cotton content of products is U.S. produced, cotton other than Upland, or imported products that are eligible to be labeled as 100 percent organic under the National Organic Program (7 CFR part 205) and who is not a split operation.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. chapter 35) the information collection requirements contained in the regulation that needed to be amended have been previously approved by OMB and were assigned control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

**List of Subjects in 7 CFR Part 1205**

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 1205 is amended as follows:

**PART 1205—COTTON RESEARCH AND PROMOTION**

■ 1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101-2118.

■ 2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

**§ 1205.510 Levy of assessments.**

\* \* \* \* \*

(b) \* \* \*

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is 1.4109 cents per kilogram.

(3) \* \* \*

(ii) \* \* \*

**IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)**

HTS No.	Conv. Factor	Cents/kg.
5007106010 .....	0.2713	0.3828
5007106020 .....	0.2713	0.3828
5007906010 .....	0.2713	0.3828
5007906020 .....	0.2713	0.3828
5112904000 .....	0.1085	0.1531
5112905000 .....	0.1085	0.1531
5112909010 .....	0.1085	0.1531
5112909090 .....	0.1085	0.1531
5201000500 .....	0	1.4109
5201001200 .....	0	1.4109
5201001400 .....	0	1.4109
5201001800 .....	0	1.4109
5201002200 .....	0	1.4109
5201002400 .....	0	1.4109
5201002800 .....	0	1.4109
5201003400 .....	0	1.4109
5201003800 .....	0	1.4109
5204110000 .....	1.0526	1.4852
5204190000 .....	0.6316	0.8911
5204200000 .....	1.0526	1.4852
5205111000 .....	1	1.4109
5205112000 .....	1	1.4109
5205121000 .....	1	1.4109
5205122000 .....	1	1.4109
5205131000 .....	1	1.4109
5205132000 .....	1	1.4109
5205141000 .....	1	1.4109
5205142000 .....	1	1.4109
5205151000 .....	1	1.4109
5205152000 .....	1	1.4109
5205210020 .....	1.044	1.4729
5205210090 .....	1.044	1.4729
5205220020 .....	1.044	1.4729
5205220090 .....	1.044	1.4729
5205230020 .....	1.044	1.4729
5205230090 .....	1.044	1.4729
5205240020 .....	1.044	1.4729
5205240090 .....	1.044	1.4729
5205260020 .....	1.044	1.4729
5205260090 .....	1.044	1.4729
5205270020 .....	1.044	1.4729
5205270090 .....	1.044	1.4729
5205280020 .....	1.044	1.4729
5205280090 .....	1.044	1.4729
5205310000 .....	1	1.4109
5205320000 .....	1	1.4109
5205330000 .....	1	1.4109
5205340000 .....	1	1.4109
5205350000 .....	1	1.4109
5205410020 .....	1.044	1.4729
5205410090 .....	1.044	1.4729
5205420021 .....	1.044	1.4729
5205420029 .....	1.044	1.4729
5205420090 .....	1.044	1.4729

**IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued**

HTS No.	Conv. Factor	Cents/kg.
5205430021 .....	1.044	1.4729
5205430029 .....	1.044	1.4729
5205430090 .....	1.044	1.4729
5205440021 .....	1.044	1.4729
5205440029 .....	1.044	1.4729
5205440090 .....	1.044	1.4729
5205460021 .....	1.044	1.4729
5205460029 .....	1.044	1.4729
5205460090 .....	1.044	1.4729
5205470021 .....	1.044	1.4729
5205470029 .....	1.044	1.4729
5205470090 .....	1.044	1.4729
5205480020 .....	1.044	1.4729
5205480090 .....	1.044	1.4729
5206110000 .....	0.7368	1.0396
5206120000 .....	0.7368	1.0396
5206130000 .....	0.7368	1.0396
5206140000 .....	0.7368	1.0396
5206150000 .....	0.7368	1.0396
5206210000 .....	0.7692	1.0853
5206220000 .....	0.7692	1.0853
5206230000 .....	0.7692	1.0853
5206240000 .....	0.7692	1.0853
5206250000 .....	0.7692	1.0853
5206310000 .....	0.7368	1.0396
5206320000 .....	0.7368	1.0396
5206330000 .....	0.7368	1.0396
5206340000 .....	0.7368	1.0396
5206350000 .....	0.7368	1.0396
5206410000 .....	0.7692	1.0853
5206420000 .....	0.7692	1.0853
5206430000 .....	0.7692	1.0853
5206440000 .....	0.7692	1.0853
5206450000 .....	0.7692	1.0853
5207100000 .....	0.9474	1.3366
5207900000 .....	0.6316	0.8911
5208112020 .....	1.0852	1.5311
5208112040 .....	1.0852	1.5311
5208112090 .....	1.0852	1.5311
5208114020 .....	1.0852	1.5311
5208114040 .....	1.0852	1.5311
5208114060 .....	1.0852	1.5311
5208114090 .....	1.0852	1.5311
5208116000 .....	1.0852	1.5311
5208118020 .....	1.0852	1.5311
5208118090 .....	1.0852	1.5311
5208124020 .....	1.0852	1.5311
5208124040 .....	1.0852	1.5311
5208124090 .....	1.0852	1.5311
5208126020 .....	1.0852	1.5311
5208126040 .....	1.0852	1.5311
5208126060 .....	1.0852	1.5311
5208126090 .....	1.0852	1.5311
5208128020 .....	1.0852	1.5311
5208128090 .....	1.0852	1.5311
5208130000 .....	1.0852	1.5311
5208192020 .....	1.0852	1.5311
5208192090 .....	1.0852	1.5311
5208194020 .....	1.0852	1.5311
5208194090 .....	1.0852	1.5311
5208196020 .....	1.0852	1.5311
5208196090 .....	1.0852	1.5311
5208198020 .....	1.0852	1.5311
5208198090 .....	1.0852	1.5311
5208212020 .....	1.0852	1.5311
5208212040 .....	1.0852	1.5311
5208212090 .....	1.0852	1.5311
5208214020 .....	1.0852	1.5311
5208214040 .....	1.0852	1.5311
5208214060 .....	1.0852	1.5311

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued		
HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.
5208214090	1.0852	1.5311	5208514020	1.0852	1.5311	5209416040	1.0309	1.4545
5208216020	1.0852	1.5311	5208514040	1.0852	1.5311	5209420020	0.9767	1.3780
5208216090	1.0852	1.5311	5208514090	1.0852	1.5311	5209420040	0.9767	1.3780
5208224020	1.0852	1.5311	5208516020	1.0852	1.5311	5209420060	0.9767	1.3780
5208224040	1.0852	1.5311	5208516040	1.0852	1.5311	5209420080	0.9767	1.3780
5208224090	1.0852	1.5311	5208516060	1.0852	1.5311	5209430030	1.0309	1.4545
5208226020	1.0852	1.5311	5208516090	1.0852	1.5311	5209430050	1.0309	1.4545
5208226040	1.0852	1.5311	5208518020	1.0852	1.5311	5209490020	1.0309	1.4545
5208226060	1.0852	1.5311	5208518090	1.0852	1.5311	5209490040	1.0309	1.4545
5208226090	1.0852	1.5311	5208521000	1.0852	1.5311	5209490090	1.0309	1.4545
5208228020	1.0852	1.5311	5208523020	1.0852	1.5311	5209513000	1.0309	1.4545
5208228090	1.0852	1.5311	5208523035	1.0852	1.5311	5209516015	1.0852	1.5311
5208230000	1.0852	1.5311	5208523045	1.0852	1.5311	5209516025	1.0852	1.5311
5208292020	1.0852	1.5311	5208523090	1.0852	1.5311	5209516032	1.0852	1.5311
5208292090	1.0852	1.5311	5208524020	1.0852	1.5311	5209516035	1.0852	1.5311
5208294020	1.0852	1.5311	5208524035	1.0852	1.5311	5209516050	1.0852	1.5311
5208294090	1.0852	1.5311	5208524045	1.0852	1.5311	5209516090	1.0852	1.5311
5208296020	1.0852	1.5311	5208524055	1.0852	1.5311	5209520020	1.0852	1.5311
5208296090	1.0852	1.5311	5208524065	1.0852	1.5311	5209520040	1.0852	1.5311
5208298020	1.0852	1.5311	5208524090	1.0852	1.5311	5209590015	1.0852	1.5311
5208298090	1.0852	1.5311	5208525020	1.0852	1.5311	5209590025	1.0852	1.5311
5208312000	1.0852	1.5311	5208525090	1.0852	1.5311	5209590040	1.0852	1.5311
5208314020	1.0852	1.5311	5208591000	1.0852	1.5311	5209590060	1.0852	1.5311
5208314040	1.0852	1.5311	5208592015	1.0852	1.5311	5209590090	1.0852	1.5311
5208314090	1.0852	1.5311	5208592025	1.0852	1.5311	5210114020	0.6511	0.9187
5208316020	1.0852	1.5311	5208592085	1.0852	1.5311	5210114040	0.6511	0.9187
5208316040	1.0852	1.5311	5208592095	1.0852	1.5311	5210114090	0.6511	0.9187
5208316060	1.0852	1.5311	5208594020	1.0852	1.5311	5210116020	0.6511	0.9187
5208316090	1.0852	1.5311	5208594090	1.0852	1.5311	5210116040	0.6511	0.9187
5208318020	1.0852	1.5311	5208596020	1.0852	1.5311	5210116060	0.6511	0.9187
5208318090	1.0852	1.5311	5208596090	1.0852	1.5311	5210116090	0.6511	0.9187
5208321000	1.0852	1.5311	5208598020	1.0852	1.5311	5210118020	0.6511	0.9187
5208323020	1.0852	1.5311	5208598090	1.0852	1.5311	5210118090	0.6511	0.9187
5208323040	1.0852	1.5311	5209110020	1.0309	1.4545	5210191000	0.6511	0.9187
5208323090	1.0852	1.5311	5209110025	1.0309	1.4545	5210192020	0.6511	0.9187
5208324020	1.0852	1.5311	5209110035	1.0309	1.4545	5210192090	0.6511	0.9187
5208324040	1.0852	1.5311	5209110050	1.0309	1.4545	5210194020	0.6511	0.9187
5208324060	1.0852	1.5311	5209110090	1.0309	1.4545	5210194090	0.6511	0.9187
5208324090	1.0852	1.5311	5209120020	1.0309	1.4545	5210196020	0.6511	0.9187
5208325020	1.0852	1.5311	5209120040	1.0309	1.4545	5210196090	0.6511	0.9187
5208325090	1.0852	1.5311	5209190020	1.0309	1.4545	5210198020	0.6511	0.9187
5208330000	1.0852	1.5311	5209190040	1.0309	1.4545	5210198090	0.6511	0.9187
5208392020	1.0852	1.5311	5209190060	1.0309	1.4545	5210214020	0.6511	0.9187
5208392090	1.0852	1.5311	5209190090	1.0309	1.4545	5210214040	0.6511	0.9187
5208394020	1.0852	1.5311	5209210020	1.0309	1.4545	5210214090	0.6511	0.9187
5208394090	1.0852	1.5311	5209210025	1.0309	1.4545	5210216020	0.6511	0.9187
5208396020	1.0852	1.5311	5209210035	1.0309	1.4545	5210216040	0.6511	0.9187
5208396090	1.0852	1.5311	5209210050	1.0309	1.4545	5210216060	0.6511	0.9187
5208398020	1.0852	1.5311	5209210090	1.0309	1.4545	5210216090	0.6511	0.9187
5208398090	1.0852	1.5311	5209220020	1.0309	1.4545	5210218020	0.6511	0.9187
5208412000	1.0852	1.5311	5209220040	1.0309	1.4545	5210218090	0.6511	0.9187
5208414000	1.0852	1.5311	5209290020	1.0309	1.4545	5210291000	0.6511	0.9187
5208416000	1.0852	1.5311	5209290040	1.0309	1.4545	5210292020	0.6511	0.9187
5208418000	1.0852	1.5311	5209290060	1.0309	1.4545	5210292090	0.6511	0.9187
5208421000	1.0852	1.5311	5209290090	1.0309	1.4545	5210294020	0.6511	0.9187
5208423000	1.0852	1.5311	5209313000	1.0309	1.4545	5210294090	0.6511	0.9187
5208424000	1.0852	1.5311	5209316020	1.0309	1.4545	5210296020	0.6511	0.9187
5208425000	1.0852	1.5311	5209316025	1.0309	1.4545	5210296090	0.6511	0.9187
5208430000	1.0852	1.5311	5209316035	1.0309	1.4545	5210298020	0.6511	0.9187
5208492000	1.0852	1.5311	5209316050	1.0309	1.4545	5210298090	0.6511	0.9187
5208494010	1.0852	1.5311	5209316090	1.0309	1.4545	5210314020	0.6511	0.9187
5208494020	1.0852	1.5311	5209320020	1.0309	1.4545	5210314040	0.6511	0.9187
5208494090	1.0852	1.5311	5209320040	1.0309	1.4545	5210314090	0.6511	0.9187
5208496010	1.0852	1.5311	5209390020	1.0309	1.4545	5210316020	0.6511	0.9187
5208496020	1.0852	1.5311	5209390040	1.0309	1.4545	5210316040	0.6511	0.9187
5208496030	1.0852	1.5311	5209390060	1.0309	1.4545	5210316060	0.6511	0.9187
5208496090	1.0852	1.5311	5209390080	1.0309	1.4545	5210316090	0.6511	0.9187
5208498020	1.0852	1.5311	5209390090	1.0309	1.4545	5210318020	0.6511	0.9187
5208498090	1.0852	1.5311	5209413000	1.0309	1.4545	5210318090	0.6511	0.9187
5208512000	1.0852	1.5311	5209416020	1.0309	1.4545	5210320000	0.6511	0.9187

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued		
HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.
5210392020	0.6511	0.9187	5211390060	0.6511	0.9187	5212156070	0.8681	1.2249
5210392090	0.6511	0.9187	5211390090	0.6511	0.9187	5212156080	0.8681	1.2249
5210394020	0.6511	0.9187	5211410020	0.6511	0.9187	5212156090	0.8681	1.2249
5210394090	0.6511	0.9187	5211410040	0.6511	0.9187	5212211010	0.5845	0.8247
5210396020	0.6511	0.9187	5211420020	0.7054	0.9952	5212211020	0.6231	0.8791
5210396090	0.6511	0.9187	5211420040	0.7054	0.9952	5212216010	0.8681	1.2249
5210398020	0.6511	0.9187	5211420060	0.6511	0.9187	5212216020	0.8681	1.2249
5210398090	0.6511	0.9187	5211420080	0.6511	0.9187	5212216030	0.8681	1.2249
5210414000	0.6511	0.9187	5211430030	0.6511	0.9187	5212216040	0.8681	1.2249
5210416000	0.6511	0.9187	5211430050	0.6511	0.9187	5212216050	0.8681	1.2249
5210418000	0.6511	0.9187	5211490020	0.6511	0.9187	5212216060	0.8681	1.2249
5210491000	0.6511	0.9187	5211490090	0.6511	0.9187	5212216090	0.8681	1.2249
5210492000	0.6511	0.9187	5211510020	0.6511	0.9187	5212221010	0.5845	0.8247
5210494010	0.6511	0.9187	5211510030	0.6511	0.9187	5212221020	0.6231	0.8791
5210494020	0.6511	0.9187	5211510050	0.6511	0.9187	5212226010	0.8681	1.2249
5210494090	0.6511	0.9187	5211510090	0.6511	0.9187	5212226020	0.8681	1.2249
5210496010	0.6511	0.9187	5211520020	0.6511	0.9187	5212226030	0.8681	1.2249
5210496020	0.6511	0.9187	5211520040	0.6511	0.9187	5212226040	0.8681	1.2249
5210496090	0.6511	0.9187	5211590015	0.6511	0.9187	5212226050	0.8681	1.2249
5210498020	0.6511	0.9187	5211590025	0.6511	0.9187	5212226060	0.8681	1.2249
5210498090	0.6511	0.9187	5211590040	0.6511	0.9187	5212226090	0.8681	1.2249
5210514020	0.6511	0.9187	5211590060	0.6511	0.9187	5212231010	0.5845	0.8247
5210514040	0.6511	0.9187	5211590090	0.6511	0.9187	5212231020	0.6231	0.8791
5210514090	0.6511	0.9187	5212111010	0.5845	0.8247	5212236010	0.8681	1.2249
5210516020	0.6511	0.9187	5212111020	0.6231	0.8791	5212236020	0.8681	1.2249
5210516040	0.6511	0.9187	5212116010	0.8681	1.2249	5212236030	0.8681	1.2249
5210516060	0.6511	0.9187	5212116020	0.8681	1.2249	5212236040	0.8681	1.2249
5210516090	0.6511	0.9187	5212116030	0.8681	1.2249	5212236050	0.8681	1.2249
5210518020	0.6511	0.9187	5212116040	0.8681	1.2249	5212236060	0.8681	1.2249
5210518090	0.6511	0.9187	5212116050	0.8681	1.2249	5212236090	0.8681	1.2249
5210591000	0.6511	0.9187	5212116060	0.8681	1.2249	5212241010	0.5845	0.8247
5210592020	0.6511	0.9187	5212116070	0.8681	1.2249	5212241020	0.6231	0.8791
5210592090	0.6511	0.9187	5212116080	0.8681	1.2249	5212246010	0.8681	1.2249
5210594020	0.6511	0.9187	5212116090	0.8681	1.2249	5212246020	0.7054	0.9952
5210594090	0.6511	0.9187	5212121010	0.5845	0.8247	5212246030	0.8681	1.2249
5210596020	0.6511	0.9187	5212121020	0.6231	0.8791	5212246040	0.8681	1.2249
5210596090	0.6511	0.9187	5212126010	0.8681	1.2249	5212246090	0.8681	1.2249
5210598020	0.6511	0.9187	5212126020	0.8681	1.2249	5212251010	0.5845	0.8247
5210598090	0.6511	0.9187	5212126030	0.8681	1.2249	5212251020	0.6231	0.8791
5211110020	0.6511	0.9187	5212126040	0.8681	1.2249	5212256010	0.8681	1.2249
5211110025	0.6511	0.9187	5212126050	0.8681	1.2249	5212256020	0.8681	1.2249
5211110035	0.6511	0.9187	5212126060	0.8681	1.2249	5212256030	0.8681	1.2249
5211110050	0.6511	0.9187	5212126070	0.8681	1.2249	5212256040	0.8681	1.2249
5211110090	0.6511	0.9187	5212126080	0.8681	1.2249	5212256050	0.8681	1.2249
5211120020	0.6511	0.9187	5212126090	0.8681	1.2249	5212256060	0.8681	1.2249
5211120040	0.6511	0.9187	5212131010	0.5845	0.8247	5212256090	0.8681	1.2249
5211190020	0.6511	0.9187	5212131020	0.6231	0.8791	5309213005	0.5426	0.7655
5211190040	0.6511	0.9187	5212136010	0.8681	1.2249	5309213010	0.5426	0.7655
5211190060	0.6511	0.9187	5212136020	0.8681	1.2249	5309213015	0.5426	0.7655
5211190090	0.6511	0.9187	5212136030	0.8681	1.2249	5309213020	0.5426	0.7655
5211202120	0.6511	0.9187	5212136040	0.8681	1.2249	5309214010	0.2713	0.3828
5211202125	0.6511	0.9187	5212136050	0.8681	1.2249	5309214090	0.2713	0.3828
5211202135	0.6511	0.9187	5212136060	0.8681	1.2249	5309293005	0.5426	0.7655
5211202150	0.6511	0.9187	5212136070	0.8681	1.2249	5309293010	0.5426	0.7655
5211202190	0.6511	0.9187	5212136080	0.8681	1.2249	5309293015	0.5426	0.7655
5211202220	0.6511	0.9187	5212136090	0.8681	1.2249	5309293020	0.5426	0.7655
5211202240	0.6511	0.9187	5212141010	0.5845	0.8247	5309294010	0.2713	0.3828
5211202920	0.6511	0.9187	5212141020	0.6231	0.8791	5309294090	0.2713	0.3828
5211202940	0.6511	0.9187	5212146010	0.8681	1.2249	5311003005	0.5426	0.7655
5211202960	0.6511	0.9187	5212146020	0.8681	1.2249	5311003010	0.5426	0.7655
5211202990	0.6511	0.9187	5212146030	0.8681	1.2249	5311003015	0.5426	0.7655
5211310020	0.6511	0.9187	5212146090	0.8681	1.2249	5311003020	0.5426	0.7655
5211310025	0.6511	0.9187	5212151010	0.5845	0.8247	5311004010	0.8681	1.2249
5211310035	0.6511	0.9187	5212151020	0.6231	0.8791	5311004020	0.8681	1.2249
5211310050	0.6511	0.9187	5212156010	0.8681	1.2249	5407810010	0.5426	0.7655
5211310090	0.6511	0.9187	5212156020	0.8681	1.2249	5407810020	0.5426	0.7655
5211320020	0.6511	0.9187	5212156030	0.8681	1.2249	5407810030	0.5426	0.7655
5211320040	0.6511	0.9187	5212156040	0.8681	1.2249	5407810040	0.5426	0.7655
5211390020	0.6511	0.9187	5212156050	0.8681	1.2249	5407810090	0.5426	0.7655
5211390040	0.6511	0.9187	5212156060	0.8681	1.2249	5407820010	0.5426	0.7655

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued		
HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.
5407820020	0.5426	0.7655	5513190010	0.3581	0.5053	5514303215	0.4341	0.6124
5407820030	0.5426	0.7655	5513190020	0.3581	0.5053	5514303280	0.4341	0.6124
5407820040	0.5426	0.7655	5513190030	0.3581	0.5053	5514303310	0.4341	0.6124
5407820090	0.5426	0.7655	5513190040	0.3581	0.5053	5514303390	0.4341	0.6124
5407830010	0.5426	0.7655	5513190050	0.3581	0.5053	5514303910	0.4341	0.6124
5407830020	0.5426	0.7655	5513190060	0.3581	0.5053	5514303920	0.4341	0.6124
5407830030	0.5426	0.7655	5513190090	0.3581	0.5053	5514303990	0.4341	0.6124
5407830040	0.5426	0.7655	5513210020	0.3581	0.5053	5514410020	0.4341	0.6124
5407830090	0.5426	0.7655	5513210040	0.3581	0.5053	5514410030	0.4341	0.6124
5407840010	0.5426	0.7655	5513210060	0.3581	0.5053	5514410050	0.4341	0.6124
5407840020	0.5426	0.7655	5513210090	0.3581	0.5053	5514410090	0.4341	0.6124
5407840030	0.5426	0.7655	5513230121	0.3581	0.5053	5514420020	0.4341	0.6124
5407840040	0.5426	0.7655	5513230141	0.3581	0.5053	5514420040	0.4341	0.6124
5407840090	0.5426	0.7655	5513230191	0.3581	0.5053	5514430020	0.4341	0.6124
5509210000	0.1053	0.1485	5513290010	0.3581	0.5053	5514430040	0.4341	0.6124
5509220010	0.1053	0.1485	5513290020	0.3581	0.5053	5514430090	0.4341	0.6124
5509220090	0.1053	0.1485	5513290030	0.3581	0.5053	5514490010	0.4341	0.6124
5509530030	0.3158	0.4455	5513290040	0.3581	0.5053	5514490020	0.4341	0.6124
5509530060	0.3158	0.4455	5513290050	0.3581	0.5053	5514490030	0.4341	0.6124
5509620000	0.5263	0.7426	5513290060	0.3581	0.5053	5514490040	0.4341	0.6124
5509920000	0.5263	0.7426	5513290090	0.3581	0.5053	5514490090	0.4341	0.6124
5510300000	0.3684	0.5198	5513310000	0.3581	0.5053	5515110005	0.1085	0.1531
5511200000	0.3158	0.4455	5513390111	0.3581	0.5053	5515110010	0.1085	0.1531
5512110010	0.1085	0.1531	5513390015	0.3581	0.5053	5515110015	0.1085	0.1531
5512110022	0.1085	0.1531	5513390091	0.3581	0.5053	5515110020	0.1085	0.1531
5512110027	0.1085	0.1531	5513410020	0.3581	0.5053	5515110025	0.1085	0.1531
5512110030	0.1085	0.1531	5513410040	0.3581	0.5053	5515110030	0.1085	0.1531
5512110040	0.1085	0.1531	5513410060	0.3581	0.5053	5515110035	0.1085	0.1531
5512110050	0.1085	0.1531	5513410090	0.3581	0.5053	5515110040	0.1085	0.1531
5512110060	0.1085	0.1531	5513491000	0.3581	0.5053	5515110045	0.1085	0.1531
5512110070	0.1085	0.1531	5513492020	0.3581	0.5053	5515110090	0.1085	0.1531
5512110090	0.1085	0.1531	5513492040	0.3581	0.5053	5515120010	0.1085	0.1531
5512190005	0.1085	0.1531	5513492090	0.3581	0.5053	5515120022	0.1085	0.1531
5512190010	0.1085	0.1531	5513499010	0.3581	0.5053	5515120027	0.1085	0.1531
5512190015	0.1085	0.1531	5513499020	0.3581	0.5053	5515120030	0.1085	0.1531
5512190022	0.1085	0.1531	5513499030	0.3581	0.5053	5515120040	0.1085	0.1531
5512190027	0.1085	0.1531	5513499040	0.3581	0.5053	5515120090	0.1085	0.1531
5512190030	0.1085	0.1531	5513499050	0.3581	0.5053	5515190005	0.1085	0.1531
5512190035	0.1085	0.1531	5513499060	0.3581	0.5053	5515190010	0.1085	0.1531
5512190040	0.1085	0.1531	5513499090	0.3581	0.5053	5515190015	0.1085	0.1531
5512190045	0.1085	0.1531	5514110020	0.4341	0.6124	5515190020	0.1085	0.1531
5512190050	0.1085	0.1531	5514110030	0.4341	0.6124	5515190025	0.1085	0.1531
5512190090	0.1085	0.1531	5514110050	0.4341	0.6124	5515190030	0.1085	0.1531
5512210010	0.0326	0.0459	5514110090	0.4341	0.6124	5515190035	0.1085	0.1531
5512210020	0.0326	0.0459	5514120020	0.4341	0.6124	5515190040	0.1085	0.1531
5512210030	0.0326	0.0459	5514120040	0.4341	0.6124	5515190045	0.1085	0.1531
5512210040	0.0326	0.0459	5514191020	0.4341	0.6124	5515190090	0.1085	0.1531
5512210060	0.0326	0.0459	5514191040	0.4341	0.6124	5515290005	0.1085	0.1531
5512210070	0.0326	0.0459	5514191090	0.4341	0.6124	5515290010	0.1085	0.1531
5512210090	0.0326	0.0459	5514199010	0.4341	0.6124	5515290015	0.1085	0.1531
5512290010	0.217	0.3062	5514199020	0.4341	0.6124	5515290020	0.1085	0.1531
5512910010	0.0543	0.0766	5514199030	0.4341	0.6124	5515290025	0.1085	0.1531
5512990005	0.0543	0.0766	5514199040	0.4341	0.6124	5515290030	0.1085	0.1531
5512990010	0.0543	0.0766	5514199090	0.4341	0.6124	5515290035	0.1085	0.1531
5512990015	0.0543	0.0766	5514210020	0.4341	0.6124	5515290040	0.1085	0.1531
5512990020	0.0543	0.0766	5514210030	0.4341	0.6124	5515290045	0.1085	0.1531
5512990025	0.0543	0.0766	5514210050	0.4341	0.6124	5515290090	0.1085	0.1531
5512990030	0.0543	0.0766	5514210090	0.4341	0.6124	5515999005	0.1085	0.1531
5512990035	0.0543	0.0766	5514220020	0.4341	0.6124	5515999010	0.1085	0.1531
5512990040	0.0543	0.0766	5514220040	0.4341	0.6124	5515999015	0.1085	0.1531
5512990045	0.0543	0.0766	5514230020	0.4341	0.6124	5515999020	0.1085	0.1531
5512990090	0.0543	0.0766	5514230040	0.4341	0.6124	5515999025	0.1085	0.1531
5513110020	0.3581	0.5053	5514230090	0.4341	0.6124	5515999030	0.1085	0.1531
5513110040	0.3581	0.5053	5514290010	0.4341	0.6124	5515999035	0.1085	0.1531
5513110060	0.3581	0.5053	5514290020	0.4341	0.6124	5515999040	0.1085	0.1531
5513110090	0.3581	0.5053	5514290030	0.4341	0.6124	5515999045	0.1085	0.1531
5513120000	0.3581	0.5053	5514290040	0.4341	0.6124	5515999090	0.1085	0.1531
5513130020	0.3581	0.5053	5514290090	0.4341	0.6124	5516210010	0.1085	0.1531
5513130040	0.3581	0.5053	5514303100	0.4341	0.6124	5516210020	0.1085	0.1531
5513130090	0.3581	0.5053	5514303210	0.4341	0.6124	5516210030	0.1085	0.1531

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued		
HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.
5516210040	0.1085	0.1531	5516940020	0.0543	0.0766	5702491080	0.8947	1.2624
5516210090	0.1085	0.1531	5516940030	0.0543	0.0766	5702492000	0.0895	0.1262
5516220010	0.1085	0.1531	5516940040	0.0543	0.0766	5702502000	0.0895	0.1262
5516220020	0.1085	0.1531	5516940050	0.0543	0.0766	5702504000	0.0447	0.0631
5516220030	0.1085	0.1531	5516940060	0.0543	0.0766	5702505200	0.0895	0.1262
5516220040	0.1085	0.1531	5516940070	0.0543	0.0766	5702505600	0.85	1.1993
5516220090	0.1085	0.1531	5516940090	0.0543	0.0766	5702912000	0.0447	0.0631
5516230010	0.1085	0.1531	5601210010	0.9767	1.3780	5702913000	0.0447	0.0631
5516230020	0.1085	0.1531	5601210090	0.9767	1.3780	5702914000	0.0447	0.0631
5516230030	0.1085	0.1531	5601220010	0.9767	1.3780	5702921000	0.0447	0.0631
5516230040	0.1085	0.1531	5601220090	0.9767	1.3780	5702929000	0.0447	0.0631
5516230090	0.1085	0.1531	5601300000	0.3256	0.4593	5702990500	0.8947	1.2624
5516240010	0.1085	0.1531	5602101000	0.0543	0.0766	5702991500	0.8947	1.2624
5516240020	0.1085	0.1531	5602109090	0.4341	0.6124	5703201000	0.0452	0.0638
5516240030	0.1085	0.1531	5602290000	0.4341	0.6124	5703202010	0.0452	0.0638
5516240040	0.1085	0.1531	5602906000	0.5426	0.7656	5703302000	0.0452	0.0638
5516240085	0.1085	0.1531	5602909000	0.3256	0.4593	5703900000	0.3615	0.5101
5516240095	0.1085	0.1531	5603143000	0.2713	0.3828	5705001000	0.0452	0.0638
5516410010	0.3798	0.5359	5603910010	0.0217	0.0306	5705002005	0.0452	0.0638
5516410022	0.3798	0.5359	5603910090	0.0651	0.0919	5705002015	0.0452	0.0638
5516410027	0.3798	0.5359	5603920010	0.0217	0.0306	5705002020	0.7682	1.0839
5516410030	0.3798	0.5359	5603920090	0.0651	0.0919	5705002030	0.0452	0.0638
5516410040	0.3798	0.5359	5603930010	0.0217	0.0306	5705002090	0.1808	0.2550
5516410050	0.3798	0.5359	5603930090	0.0651	0.0919	5801210000	0.9767	1.3780
5516410060	0.3798	0.5359	5603941090	0.3256	0.4593	5801221000	0.9767	1.3780
5516410070	0.3798	0.5359	5603943000	0.1628	0.2297	5801229000	0.9767	1.3780
5516410090	0.3798	0.5359	5603949010	0.0326	0.0459	5801230000	0.9767	1.3780
5516420010	0.3798	0.5359	5604100000	0.2632	0.3713	5801260010	0.7596	1.0718
5516420022	0.3798	0.5359	5604909000	0.2105	0.2970	5801260020	0.7596	1.0718
5516420027	0.3798	0.5359	5605009000	0.1579	0.2228	5801271000	0.9767	1.3780
5516420030	0.3798	0.5359	5606000010	0.1263	0.1782	5801275010	1.0852	1.5311
5516420040	0.3798	0.5359	5606000090	0.1263	0.1782	5801275020	0.9767	1.3780
5516420050	0.3798	0.5359	5607502500	0.1684	0.2376	5801310000	0.217	0.3062
5516420060	0.3798	0.5359	5607909000	0.8421	1.1881	5801320000	0.217	0.3062
5516420070	0.3798	0.5359	5608901000	1.0852	1.5311	5801330000	0.217	0.3062
5516420090	0.3798	0.5359	5608902300	0.6316	0.8911	5801360010	0.217	0.3062
5516430010	0.217	0.3062	5608902700	0.6316	0.8911	5801360020	0.217	0.3062
5516430015	0.3798	0.5359	5608903000	0.3158	0.4455	5802110000	1.0309	1.4545
5516430020	0.3798	0.5359	5609001000	0.8421	1.1881	5802190000	1.0309	1.4545
5516430035	0.3798	0.5359	5609004000	0.2105	0.2970	5802200020	0.1085	0.1531
5516430080	0.3798	0.5359	5701101300	0.0526	0.0743	5802200090	0.3256	0.4593
5516440010	0.3798	0.5359	5701101600	0.0526	0.0743	5802300030	0.4341	0.6124
5516440022	0.3798	0.5359	5701104000	0.0526	0.0743	5802300090	0.1085	0.1531
5516440027	0.3798	0.5359	5701109000	0.0526	0.0743	5803001000	1.0852	1.5311
5516440030	0.3798	0.5359	5701901010	1	1.4109	5803002000	0.8681	1.2249
5516440040	0.3798	0.5359	5701901020	1	1.4109	5803003000	0.8681	1.2249
5516440050	0.3798	0.5359	5701901030	0.0526	0.0743	5803005000	0.3256	0.4593
5516440060	0.3798	0.5359	5701901090	0.0526	0.0743	5804101000	0.4341	0.6124
5516440070	0.3798	0.5359	5701902010	0.9474	1.3366	5804109090	0.2193	0.3094
5516440090	0.3798	0.5359	5701902020	0.9474	1.3366	5804291000	0.8772	1.2376
5516910010	0.0543	0.0766	5701902030	0.0526	0.0743	5804300020	0.3256	0.4593
5516910020	0.0543	0.0766	5701902090	0.0526	0.0743	5805001000	0.1085	0.1531
5516910030	0.0543	0.0766	5702101000	0.0447	0.0631	5805003000	1.0852	1.5311
5516910040	0.0543	0.0766	5702109010	0.0447	0.0631	5806101000	0.8681	1.2249
5516910050	0.0543	0.0766	5702109020	0.85	1.1993	5806103090	0.217	0.3062
5516910060	0.0543	0.0766	5702109030	0.0447	0.0631	5806200010	0.2577	0.3636
5516910070	0.0543	0.0766	5702109090	0.0447	0.0631	5806200090	0.2577	0.3636
5516910090	0.0543	0.0766	5702201000	0.0447	0.0631	5806310000	0.8681	1.2249
5516920010	0.0543	0.0766	5702311000	0.0447	0.0631	5806393080	0.217	0.3062
5516920020	0.0543	0.0766	5702312000	0.0895	0.1262	5806400000	0.0814	0.1148
5516920030	0.0543	0.0766	5702322000	0.0895	0.1262	5807100510	0.8681	1.2249
5516920040	0.0543	0.0766	5702391000	0.0895	0.1262	5807102010	0.8681	1.2249
5516920050	0.0543	0.0766	5702392010	0.8053	1.1361	5807900510	0.8681	1.2249
5516920060	0.0543	0.0766	5702392090	0.0447	0.0631	5807902010	0.8681	1.2249
5516920070	0.0543	0.0766	5702411000	0.0447	0.0631	5808104000	0.217	0.3062
5516920090	0.0543	0.0766	5702412000	0.0447	0.0631	5808107000	0.217	0.3062
5516930010	0.0543	0.0766	5702421000	0.0895	0.1262	5808900010	0.4341	0.6124
5516930020	0.0543	0.0766	5702422020	0.0895	0.1262	5810100000	0.3256	0.4593
5516930090	0.0543	0.0766	5702422080	0.0895	0.1262	5810910010	0.7596	1.0718
5516940010	0.0543	0.0766	5702491020	0.8947	1.2624	5810910020	0.7596	1.0718

IMPORT ASSESSMENT TABLE (RAW  
COTTON FIBER)—Continued

HTS No.	Conv. Factor	Cents/kg.
5810921000	0.217	0.3062
5810929030	0.217	0.3062
5810929050	0.217	0.3062
5810929080	0.217	0.3062
5811002000	0.8681	1.2249
5901102000	0.5643	0.7962
5901904000	0.8139	1.1483
5903101000	0.4341	0.6124
5903103000	0.1085	0.1531
5903201000	0.4341	0.6124
5903203090	0.1085	0.1531
5903901000	0.4341	0.6124
5903903090	0.1085	0.1531
5904901000	0.0326	0.0459
5905001000	0.1085	0.1531
5905009000	0.1085	0.1531
5906100000	0.4341	0.6124
5906911000	0.4341	0.6124
5906913000	0.1085	0.1531
5906991000	0.4341	0.6124
5906993000	0.1085	0.1531
5907002500	0.3798	0.5359
5907003500	0.3798	0.5359
5907008090	0.3798	0.5359
5908000000	0.7813	1.1024
5909001000	0.6837	0.9646
5909002000	0.4883	0.6890
5910001010	0.3798	0.5359
5910001020	0.3798	0.5359
5910001030	0.3798	0.5359
5910001060	0.3798	0.5359
5910001070	0.3798	0.5359
5910001090	0.6837	0.9646
5910009000	0.5697	0.8038
5911101000	0.1736	0.2450
5911102000	0.0434	0.0612
5911201000	0.4341	0.6124
5911310010	0.4341	0.6124
5911310020	0.4341	0.6124
5911310030	0.4341	0.6124
5911310080	0.4341	0.6124
5911320010	0.4341	0.6124
5911320020	0.4341	0.6124
5911320030	0.4341	0.6124
5911320080	0.4341	0.6124
5911400000	0.5426	0.7655
5911900040	0.3158	0.4455
5911900080	0.2105	0.2970
6001106000	0.1096	0.1547
6001210000	0.9868	1.3923
6001220000	0.1096	0.1547
6001290000	0.1096	0.1547
6001910010	0.8772	1.2376
6001910020	0.8772	1.2376
6001920010	0.0548	0.0774
6001920020	0.0548	0.0774
6001920030	0.0548	0.0774
6001920040	0.0548	0.0774
6001999000	0.1096	0.1547
6002404000	0.7401	1.0443
6002408020	0.1974	0.2785
6002408080	0.1974	0.2785
6002904000	0.7895	1.1139
6002908020	0.1974	0.2785
6002908080	0.1974	0.2785
6003201000	0.8772	1.2376
6003203000	0.8772	1.2376
6003301000	0.1096	0.1547
6003306000	0.1096	0.1547
6003401000	0.1096	0.1547

IMPORT ASSESSMENT TABLE (RAW  
COTTON FIBER)—Continued

HTS No.	Conv. Factor	Cents/kg.
6003406000	0.1096	0.1547
6003901000	0.1096	0.1547
6003909000	0.1096	0.1547
6004100010	0.2961	0.4177
6004100025	0.2961	0.4177
6004100085	0.2961	0.4177
6004902010	0.2961	0.4177
6004902025	0.2961	0.4177
6004902085	0.2961	0.4177
6004909000	0.2961	0.4177
6005210000	0.7127	1.0056
6005220000	0.7127	1.0056
6005230000	0.7127	1.0056
6005240000	0.7127	1.0056
6005310010	0.1096	0.1547
6005310080	0.1096	0.1547
6005320010	0.1096	0.1547
6005320080	0.1096	0.1547
6005330010	0.1096	0.1547
6005330080	0.1096	0.1547
6005340010	0.1096	0.1547
6005340080	0.1096	0.1547
6005410010	0.1096	0.1547
6005410080	0.1096	0.1547
6005420010	0.1096	0.1547
6005420080	0.1096	0.1547
6005430010	0.1096	0.1547
6005430080	0.1096	0.1547
6005440010	0.1096	0.1547
6005440080	0.1096	0.1547
6005909000	0.1096	0.1547
6006211000	1.0965	1.5470
6006219020	0.7675	1.0829
6006219080	0.7675	1.0829
6006221000	1.0965	1.5470
6006229020	0.7675	1.0829
6006229080	0.7675	1.0829
6006231000	1.0965	1.5470
6006239020	0.7675	1.0829
6006239080	0.7675	1.0829
6006241000	1.0965	1.5470
6006249020	0.7675	1.0829
6006249080	0.7675	1.0829
6006310020	0.3289	0.4641
6006310040	0.3289	0.4641
6006310060	0.3289	0.4641
6006310080	0.3289	0.4641
6006320020	0.3289	0.4641
6006320040	0.3289	0.4641
6006320060	0.3289	0.4641
6006320080	0.3289	0.4641
6006330020	0.3289	0.4641
6006330040	0.3289	0.4641
6006330060	0.3289	0.4641
6006330080	0.3289	0.4641
6006340020	0.3289	0.4641
6006340040	0.3289	0.4641
6006340060	0.3289	0.4641
6006340080	0.3289	0.4641
6006410025	0.3289	0.4641
6006410085	0.3289	0.4641
6006420025	0.3289	0.4641
6006420085	0.3289	0.4641
6006430025	0.3289	0.4641
6006430085	0.3289	0.4641
6006440025	0.3289	0.4641
6006440085	0.3289	0.4641
6006909000	0.1096	0.1547
6101200010	1.02	1.4391
6101200020	1.02	1.4391

IMPORT ASSESSMENT TABLE (RAW  
COTTON FIBER)—Continued

HTS No.	Conv. Factor	Cents/kg.
6101301000	0.2072	0.2923
6101900500	0.1912	0.2698
6101909010	0.5737	0.8095
6101909030	0.51	0.7196
6101909060	0.255	0.3598
6102100000	0.255	0.3598
6102200010	0.9562	1.3492
6102200020	0.9562	1.3492
6102300500	0.1785	0.2518
6102909005	0.5737	0.8095
6102909015	0.4462	0.6296
6102909030	0.255	0.3598
6103101000	0.0637	0.0899
6103104000	0.1218	0.1719
6103105000	0.1218	0.1719
6103106010	0.8528	1.2033
6103106015	0.8528	1.2033
6103106030	0.8528	1.2033
6103109010	0.5482	0.7735
6103109020	0.5482	0.7735
6103109030	0.5482	0.7735
6103109040	0.1218	0.1719
6103109050	0.1218	0.1719
6103109080	0.1827	0.2578
6103320000	0.8722	1.2306
6103398010	0.7476	1.0548
6103398030	0.3738	0.5274
6103398060	0.2492	0.3516
6103411010	0.3576	0.5045
6103411020	0.3576	0.5045
6103412000	0.3576	0.5045
6103421020	0.8343	1.1771
6103421035	0.8343	1.1771
6103421040	0.8343	1.1771
6103421050	0.8343	1.1771
6103421065	0.8343	1.1771
6103421070	0.8343	1.1771
6103422010	0.8343	1.1771
6103422015	0.8343	1.1771
6103422025	0.8343	1.1771
6103431520	0.2384	0.3363
6103431535	0.2384	0.3363
6103431540	0.2384	0.3363
6103431550	0.2384	0.3363
6103431565	0.2384	0.3363
6103431570	0.2384	0.3363
6103432020	0.2384	0.3363
6103432025	0.2384	0.3363
6103491020	0.2437	0.3438
6103491060	0.2437	0.3438
6103492000	0.2437	0.3438
6103498010	0.5482	0.7735
6103498014	0.3655	0.5157
6103498024	0.2437	0.3438
6103498026	0.2437	0.3438
6103498034	0.5482	0.7735
6103498038	0.3655	0.5157
6103498060	0.2437	0.3438
6104196010	0.8722	1.2306
6104196020	0.8722	1.2306
6104196030	0.8722	1.2306
6104196040	0.8722	1.2306
6104198010	0.5607	0.7911
6104198020	0.5607	0.7911
6104198030	0.5607	0.7911
6104198040	0.5607	0.7911
6104198060	0.3738	0.5274
6104198090	0.2492	0.3516
6104320000	0.8722	1.2306
6104392010	0.5607	0.7911

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued		
HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.
6104392030	0.3738	0.5274	6107110010	1.0727	1.5134	6110201022	0.7476	1.0548
6104392090	0.2492	0.3516	6107110020	1.0727	1.5134	6110201024	0.7476	1.0548
6104420010	0.8528	1.2033	6107120010	0.4767	0.6726	6110201026	0.7476	1.0548
6104420020	0.8528	1.2033	6107120020	0.4767	0.6726	6110201029	0.7476	1.0548
6104499010	0.5482	0.7735	6107191000	0.1192	0.1682	6110201031	0.7476	1.0548
6104499030	0.3655	0.5157	6107210010	0.8343	1.1771	6110201033	0.7476	1.0548
6104499060	0.2437	0.3438	6107210020	0.7151	1.0089	6110202005	1.1214	1.5822
6104520010	0.8822	1.2447	6107220010	0.3576	0.5045	6110202010	1.1214	1.5822
6104520020	0.8822	1.2447	6107220015	0.1192	0.1682	6110202015	1.1214	1.5822
6104598010	0.5672	0.8002	6107220025	0.2384	0.3363	6110202020	1.1214	1.5822
6104598030	0.3781	0.5335	6107299000	0.1788	0.2522	6110202025	1.1214	1.5822
6104598090	0.2521	0.3556	6107910030	1.1918	1.6816	6110202030	1.1214	1.5822
6104610010	0.2384	0.3363	6107910040	1.1918	1.6816	6110202035	1.1214	1.5822
6104610020	0.2384	0.3363	6107910090	0.9535	1.3453	6110202040	1.0965	1.5470
6104610030	0.2384	0.3363	6107991030	0.3576	0.5045	6110202045	1.0965	1.5470
6104621010	0.7509	1.0594	6107991040	0.3576	0.5045	6110202067	1.0965	1.5470
6104621020	0.8343	1.1771	6107991090	0.3576	0.5045	6110202069	1.0965	1.5470
6104621030	0.8343	1.1771	6107999000	0.1192	0.1682	6110202077	1.0965	1.5470
6104622006	0.7151	1.0089	6108199010	1.0611	1.4971	6110202079	1.0965	1.5470
6104622011	0.8343	1.1771	6108199030	0.2358	0.3327	6110909010	0.5607	0.7911
6104622016	0.7151	1.0089	6108210010	1.179	1.6635	6110909012	0.1246	0.1758
6104622021	0.8343	1.1771	6108210020	1.179	1.6635	6110909014	0.3738	0.5274
6104622026	0.7151	1.0089	6108299000	0.3537	0.4990	6110909020	0.2492	0.3516
6104622028	0.8343	1.1771	6108310010	1.0611	1.4971	6110909022	0.2492	0.3516
6104622030	0.8343	1.1771	6108310020	1.0611	1.4971	6110909024	0.2492	0.3516
6104622050	0.8343	1.1771	6108320010	0.2358	0.3327	6110909026	0.5607	0.7911
6104622060	0.8343	1.1771	6108320015	0.2358	0.3327	6110909028	0.1869	0.2637
6104631020	0.2384	0.3363	6108320025	0.2358	0.3327	6110909030	0.3738	0.5274
6104631030	0.2384	0.3363	6108398000	0.3537	0.4990	6110909038	0.2492	0.3516
6104632006	0.8343	1.1771	6108910005	1.179	1.6635	6110909040	0.2492	0.3516
6104632011	0.8343	1.1771	6108910015	1.179	1.6635	6110909042	0.2492	0.3516
6104632016	0.7151	1.0089	6108910025	1.179	1.6635	6110909044	0.5607	0.7911
6104632021	0.8343	1.1771	6108910030	1.179	1.6635	6110909046	0.5607	0.7911
6104632026	0.3576	0.5045	6108910040	1.179	1.6635	6110909052	0.3738	0.5274
6104632028	0.3576	0.5045	6108920005	0.2358	0.3327	6110909054	0.3738	0.5274
6104632030	0.3576	0.5045	6108920015	0.2358	0.3327	6110909064	0.2492	0.3516
6104632050	0.7151	1.0089	6108920025	0.2358	0.3327	6110909066	0.2492	0.3516
6104632060	0.3576	0.5045	6108920030	0.2358	0.3327	6110909067	0.5607	0.7911
6104691000	0.3655	0.5157	6108920040	0.2358	0.3327	6110909069	0.5607	0.7911
6104692030	0.3655	0.5157	6108999000	0.3537	0.4990	6110909071	0.5607	0.7911
6104692060	0.3655	0.5157	6109100004	1.0022	1.4140	6110909073	0.5607	0.7911
6104698010	0.5482	0.7735	6109100007	1.0022	1.4140	6110909079	0.3738	0.5274
6104698014	0.3655	0.5157	6109100011	1.0022	1.4140	6110909080	0.3738	0.5274
6104698020	0.2437	0.3438	6109100012	1.0022	1.4140	6110909081	0.3738	0.5274
6104698022	0.5482	0.7735	6109100014	1.0022	1.4140	6110909082	0.3738	0.5274
6104698026	0.3655	0.5157	6109100018	1.0022	1.4140	6110909088	0.2492	0.3516
6104698038	0.2437	0.3438	6109100023	1.0022	1.4140	6110909090	0.2492	0.3516
6104698040	0.2437	0.3438	6109100027	1.0022	1.4140	6111201000	1.1918	1.6816
6105100010	0.9332	1.3166	6109100037	1.0022	1.4140	6111202000	1.1918	1.6816
6105100020	0.9332	1.3166	6109100040	1.0022	1.4140	6111203000	0.9535	1.3453
6105100030	0.9332	1.3166	6109100045	1.0022	1.4140	6111204000	0.9535	1.3453
6105202010	0.2916	0.4114	6109100060	1.0022	1.4140	6111205000	0.9535	1.3453
6105202020	0.2916	0.4114	6109100065	1.0022	1.4140	6111206010	0.9535	1.3453
6105202030	0.2916	0.4114	6109100070	1.0022	1.4140	6111206020	0.9535	1.3453
6105908010	0.5249	0.7406	6109901007	0.2948	0.4159	6111206030	0.9535	1.3453
6105908030	0.3499	0.4937	6109901009	0.2948	0.4159	6111206050	0.9535	1.3453
6105908060	0.2333	0.3292	6109901013	0.2948	0.4159	6111206070	0.9535	1.3453
6106100010	0.9332	1.3166	6109901025	0.2948	0.4159	6111301000	0.2384	0.3363
6106100020	0.9332	1.3166	6109901047	0.2948	0.4159	6111302000	0.2384	0.3363
6106100030	0.9332	1.3166	6109901049	0.2948	0.4159	6111303000	0.2384	0.3363
6106202010	0.2916	0.4114	6109901050	0.2948	0.4159	6111304000	0.2384	0.3363
6106202020	0.4666	0.6583	6109901060	0.2948	0.4159	6111305010	0.2384	0.3363
6106202030	0.2916	0.4114	6109901065	0.2948	0.4159	6111305015	0.2384	0.3363
6106901500	0.0583	0.0823	6109901070	0.2948	0.4159	6111305020	0.2384	0.3363
6106902510	0.5249	0.7406	6109901075	0.2948	0.4159	6111305030	0.2384	0.3363
6106902530	0.3499	0.4937	6109901090	0.2948	0.4159	6111305050	0.2384	0.3363
6106902550	0.2916	0.4114	6109908010	0.3499	0.4937	6111305070	0.2384	0.3363
6106903010	0.5249	0.7406	6109908030	0.2333	0.3292	6111901000	0.2384	0.3363
6106903030	0.3499	0.4937	6110201010	0.7476	1.0548	6111902000	0.2384	0.3363
6106903040	0.2916	0.4114	6110201020	0.7476	1.0548	6111903000	0.2384	0.3363

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued		
HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.
6111904000	0.2384	0.3363	6114303044	0.2437	0.3438	6201199060	0.3742	0.5280
6111905010	0.2384	0.3363	6114303052	0.2437	0.3438	6201921000	0.8779	1.2386
6111905020	0.2384	0.3363	6114303054	0.2437	0.3438	6201921500	1.0974	1.5483
6111905030	0.2384	0.3363	6114303060	0.2437	0.3438	6201922005	0.9754	1.3763
6111905050	0.2384	0.3363	6114303070	0.2437	0.3438	6201922010	0.9754	1.3763
6111905070	0.2384	0.3363	6114909045	0.5482	0.7735	6201922021	1.2193	1.7203
6112110010	0.9535	1.3453	6114909055	0.3655	0.5157	6201922031	1.2193	1.7203
6112110020	0.9535	1.3453	6114909070	0.3655	0.5157	6201922041	1.2193	1.7203
6112110030	0.9535	1.3453	6115100500	0.4386	0.6188	6201922051	0.9754	1.3763
6112110040	0.9535	1.3453	6115101510	1.0965	1.5470	6201922061	0.9754	1.3763
6112110050	0.9535	1.3453	6115103000	0.9868	1.3923	6201931000	0.2926	0.4129
6112110060	0.9535	1.3453	6115106000	0.1096	0.1547	6201932010	0.2439	0.3441
6112120010	0.2384	0.3363	6115298010	1.0965	1.5470	6201932020	0.2439	0.3441
6112120020	0.2384	0.3363	6115309030	0.7675	1.0829	6201933511	0.2439	0.3441
6112120030	0.2384	0.3363	6115956000	0.9868	1.3923	6201933521	0.2439	0.3441
6112120040	0.2384	0.3363	6115959000	0.9868	1.3923	6201999010	0.5487	0.7741
6112120050	0.2384	0.3363	6115966020	0.2193	0.3094	6201999030	0.3658	0.5161
6112120060	0.2384	0.3363	6115991420	0.2193	0.3094	6201999060	0.2439	0.3441
6112191010	0.2492	0.3516	6115991920	0.2193	0.3094	6202121000	0.8879	1.2527
6112191020	0.2492	0.3516	6115999000	0.1096	0.1547	6202122010	1.0482	1.4789
6112191030	0.2492	0.3516	6116101300	0.3463	0.4885	6202122020	1.0482	1.4789
6112191040	0.2492	0.3516	6116101720	0.8079	1.1399	6202122025	1.2332	1.7399
6112191050	0.2492	0.3516	6116104810	0.4444	0.6270	6202122035	1.2332	1.7399
6112191060	0.2492	0.3516	6116105510	0.6464	0.9119	6202122050	0.8016	1.1309
6112201060	0.2492	0.3516	6116107510	0.6464	0.9119	6202122060	0.8016	1.1309
6112201070	0.2492	0.3516	6116109500	0.1616	0.2280	6202134005	0.2524	0.3561
6112201080	0.2492	0.3516	6116920500	0.8079	1.1399	6202134010	0.2524	0.3561
6112201090	0.2492	0.3516	6116920800	0.8079	1.1399	6202134020	0.3155	0.4451
6112202010	0.8722	1.2306	6116926410	1.0388	1.4656	6202134030	0.3155	0.4451
6112202020	0.3738	0.5274	6116926420	1.0388	1.4656	6202199010	0.5678	0.8012
6112202030	0.2492	0.3516	6116926430	1.1542	1.6285	6202199030	0.3786	0.5341
6112310010	0.1192	0.1682	6116926440	1.0388	1.4656	6202199060	0.2524	0.3561
6112310020	0.1192	0.1682	6116927450	1.0388	1.4656	6202921000	0.9865	1.3919
6112390010	1.0727	1.5134	6116927460	1.1542	1.6285	6202921500	0.9865	1.3919
6112410010	0.1192	0.1682	6116927470	1.0388	1.4656	6202922010	0.9865	1.3919
6112410020	0.1192	0.1682	6116928800	1.0388	1.4656	6202922020	0.9865	1.3919
6112410030	0.1192	0.1682	6116929400	1.0388	1.4656	6202922026	1.2332	1.7399
6112410040	0.1192	0.1682	6116938800	0.1154	0.1628	6202922031	1.2332	1.7399
6112490010	0.8939	1.2612	6116939400	0.1154	0.1628	6202922061	0.9865	1.3919
6113001005	0.1246	0.1758	6116994800	0.1154	0.1628	6202922071	0.9865	1.3919
6113001010	0.1246	0.1758	6116995400	0.1154	0.1628	6202931000	0.296	0.4176
6113001012	0.1246	0.1758	6116999510	0.4617	0.6514	6202932010	0.2466	0.3480
6113009015	0.3489	0.4922	6116999530	0.3463	0.4885	6202932020	0.2466	0.3480
6113009020	0.3489	0.4922	6117106010	0.9234	1.3028	6202935011	0.2466	0.3480
6113009038	0.3489	0.4922	6117106020	0.2308	0.3257	6202935021	0.2466	0.3480
6113009042	0.3489	0.4922	6117808500	0.9234	1.3028	6202999011	0.5549	0.7829
6113009055	0.3489	0.4922	6117808710	1.1542	1.6285	6202999031	0.37	0.5220
6113009060	0.3489	0.4922	6117808770	0.1731	0.2443	6202999061	0.2466	0.3480
6113009074	0.3489	0.4922	6117809510	0.9234	1.3028	6203122010	0.1233	0.1740
6113009082	0.3489	0.4922	6117809540	0.3463	0.4885	6203122020	0.1233	0.1740
6114200005	0.9747	1.3751	6117809570	0.1731	0.2443	6203191010	0.9865	1.3919
6114200010	0.9747	1.3751	6117909003	1.1542	1.6285	6203191020	0.9865	1.3919
6114200015	0.8528	1.2033	6117909015	0.2308	0.3257	6203191030	0.9865	1.3919
6114200020	0.8528	1.2033	6117909020	1.1542	1.6285	6203199010	0.5549	0.7829
6114200035	0.8528	1.2033	6117909040	1.1542	1.6285	6203199020	0.5549	0.7829
6114200040	0.8528	1.2033	6117909060	1.1542	1.6285	6203199030	0.5549	0.7829
6114200042	0.3655	0.5157	6117909080	1.1542	1.6285	6203199050	0.37	0.5220
6114200044	0.8528	1.2033	6201121000	0.8981	1.2671	6203199080	0.2466	0.3480
6114200046	0.8528	1.2033	6201122010	0.8482	1.1967	6203221000	1.2332	1.7399
6114200048	0.8528	1.2033	6201122020	0.8482	1.1967	6203321000	0.6782	0.9569
6114200052	0.8528	1.2033	6201122025	0.9979	1.4079	6203322010	1.1715	1.6529
6114200055	0.8528	1.2033	6201122035	0.9979	1.4079	6203322020	1.1715	1.6529
6114200060	0.8528	1.2033	6201122050	0.6486	0.9151	6203322030	1.1715	1.6529
6114301010	0.2437	0.3438	6201122060	0.6486	0.9151	6203322040	1.1715	1.6529
6114301020	0.2437	0.3438	6201134015	0.1996	0.2816	6203322050	1.1715	1.6529
6114302060	0.1218	0.1719	6201134020	0.1996	0.2816	6203332010	0.1233	0.1740
6114303014	0.2437	0.3438	6201134030	0.2495	0.3520	6203332020	0.1233	0.1740
6114303020	0.2437	0.3438	6201134040	0.2495	0.3520	6203392010	0.1233	0.1740
6114303030	0.2437	0.3438	6201199010	0.5613	0.7919	6203392020	0.1233	0.1740
6114303042	0.2437	0.3438	6201199030	0.3742	0.5280	6203399010	0.5549	0.7829

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued		
HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.
6203399030	0.37	0.5220	6204322030	0.9865	1.3919	6204632520	0.059	0.0832
6203399060	0.2466	0.3480	6204322040	0.9865	1.3919	6204633010	0.0603	0.0851
6203421000	1.0616	1.4978	6204398010	0.5549	0.7829	6204633090	0.0603	0.0851
6203422005	0.7077	0.9985	6204398030	0.3083	0.4350	6204633510	0.2412	0.3402
6203422010	0.9436	1.3314	6204412010	0.0603	0.0851	6204633525	0.2412	0.3402
6203422025	0.9436	1.3314	6204412020	0.0603	0.0851	6204633530	0.2412	0.3402
6203422050	0.9436	1.3314	6204421000	1.2058	1.7012	6204633532	0.2309	0.3258
6203422090	0.9436	1.3314	6204422000	0.6632	0.9357	6204633535	0.2309	0.3258
6203424003	1.0616	1.4978	6204423010	1.2058	1.7012	6204633540	0.2309	0.3258
6203424006	1.1796	1.6642	6204423020	1.2058	1.7012	6204691005	0.118	0.1664
6203424011	1.1796	1.6642	6204423030	0.9043	1.2759	6204691010	0.2359	0.3328
6203424016	0.9436	1.3314	6204423040	0.9043	1.2759	6204691025	0.2359	0.3328
6203424021	1.1796	1.6642	6204423050	0.9043	1.2759	6204691050	0.2359	0.3328
6203424026	1.1796	1.6642	6204423060	0.9043	1.2759	6204692010	0.059	0.0832
6203424031	1.1796	1.6642	6204431000	0.4823	0.6805	6204692020	0.059	0.0832
6203424036	1.1796	1.6642	6204432000	0.0603	0.0851	6204692030	0.059	0.0832
6203424041	0.9436	1.3314	6204442000	0.4316	0.6090	6204692510	0.2359	0.3328
6203424046	0.9436	1.3314	6204495010	0.5549	0.7829	6204692520	0.2359	0.3328
6203424051	0.8752	1.2348	6204495030	0.2466	0.3480	6204692530	0.2359	0.3328
6203424056	0.8752	1.2348	6204510010	0.0631	0.0890	6204692540	0.2309	0.3258
6203424061	0.8752	1.2348	6204510020	0.0631	0.0890	6204692550	0.2309	0.3258
6203431000	0.1887	0.2663	6204521000	1.2618	1.7803	6204692560	0.2309	0.3258
6203431500	0.118	0.1664	6204522010	1.1988	1.6913	6204696010	0.5308	0.7489
6203432005	0.118	0.1664	6204522020	1.1988	1.6913	6204696030	0.2359	0.3328
6203432010	0.2359	0.3328	6204522030	1.1988	1.6913	6204696070	0.3539	0.4993
6203432025	0.2359	0.3328	6204522040	1.1988	1.6913	6204699010	0.5308	0.7489
6203432050	0.2359	0.3328	6204522070	1.0095	1.4243	6204699030	0.2359	0.3328
6203432090	0.2359	0.3328	6204522080	1.0095	1.4243	6204699044	0.2359	0.3328
6203432500	0.4128	0.5825	6204531000	0.4416	0.6231	6204699046	0.2359	0.3328
6203433510	0.059	0.0832	6204532010	0.0631	0.0890	6204699050	0.3539	0.4993
6203433590	0.059	0.0832	6204532020	0.0631	0.0890	6205201000	1.1796	1.6642
6203434010	0.1167	0.1646	6204533010	0.2524	0.3561	6205202003	0.9436	1.3314
6203434015	0.1167	0.1646	6204533020	0.2524	0.3561	6205202016	0.9436	1.3314
6203434020	0.1167	0.1646	6204591000	0.4416	0.6231	6205202021	0.9436	1.3314
6203434030	0.1167	0.1646	6204594010	0.5678	0.8012	6205202026	0.9436	1.3314
6203434035	0.1167	0.1646	6204594030	0.2524	0.3561	6205202031	0.9436	1.3314
6203434040	0.1167	0.1646	6204594060	0.2524	0.3561	6205202036	1.0616	1.4978
6203491005	0.118	0.1664	6204611010	0.059	0.0832	6205202041	1.0616	1.4978
6203491010	0.2359	0.3328	6204611020	0.059	0.0832	6205202044	1.0616	1.4978
6203491025	0.2359	0.3328	6204619010	0.059	0.0832	6205202047	0.9436	1.3314
6203491050	0.2359	0.3328	6204619020	0.059	0.0832	6205202051	0.9436	1.3314
6203491090	0.2359	0.3328	6204619030	0.059	0.0832	6205202056	0.9436	1.3314
6203491500	0.4128	0.5825	6204619040	0.118	0.1664	6205202061	0.9436	1.3314
6203492015	0.2359	0.3328	6204621000	0.8681	1.2249	6205202066	0.9436	1.3314
6203492020	0.2359	0.3328	6204622005	0.7077	0.9985	6205202071	0.9436	1.3314
6203492030	0.118	0.1664	6204622010	0.9436	1.3314	6205202076	0.9436	1.3314
6203492045	0.118	0.1664	6204622025	0.9436	1.3314	6205301000	0.4128	0.5825
6203492050	0.118	0.1664	6204622050	0.9436	1.3314	6205302010	0.2949	0.4161
6203492060	0.118	0.1664	6204623000	1.1796	1.6642	6205302020	0.2949	0.4161
6203498020	0.5308	0.7489	6204624003	1.0616	1.4978	6205302030	0.2949	0.4161
6203498030	0.3539	0.4993	6204624006	1.1796	1.6642	6205302040	0.2949	0.4161
6203498045	0.2359	0.3328	6204624011	1.1796	1.6642	6205302050	0.2949	0.4161
6204110000	0.0617	0.0870	6204624021	0.9436	1.3314	6205302055	0.2949	0.4161
6204120010	0.9865	1.3919	6204624026	1.1796	1.6642	6205302060	0.2949	0.4161
6204120020	0.9865	1.3919	6204624031	1.1796	1.6642	6205302070	0.2949	0.4161
6204120030	0.9865	1.3919	6204624036	1.1796	1.6642	6205302075	0.2949	0.4161
6204120040	0.9865	1.3919	6204624041	1.1796	1.6642	6205302080	0.2949	0.4161
6204132010	0.1233	0.1740	6204624046	0.9436	1.3314	6205900710	0.118	0.1664
6204132020	0.1233	0.1740	6204624051	0.9436	1.3314	6205900720	0.118	0.1664
6204192000	0.1233	0.1740	6204624056	0.9335	1.3171	6205901000	0.2359	0.3328
6204198010	0.5549	0.7829	6204624061	0.9335	1.3171	6205903010	0.5308	0.7489
6204198020	0.5549	0.7829	6204624066	0.9335	1.3171	6205903030	0.2359	0.3328
6204198030	0.5549	0.7829	6204631000	0.2019	0.2849	6205903050	0.1769	0.2496
6204198040	0.5549	0.7829	6204631200	0.118	0.1664	6205904010	0.5308	0.7489
6204198060	0.3083	0.4350	6204631505	0.118	0.1664	6205904030	0.2359	0.3328
6204198090	0.2466	0.3480	6204631510	0.2359	0.3328	6205904040	0.2359	0.3328
6204221000	1.2332	1.7399	6204631525	0.2359	0.3328	6206100010	0.5308	0.7489
6204321000	0.6782	0.9569	6204631550	0.2359	0.3328	6206100030	0.2359	0.3328
6204322010	1.1715	1.6529	6204632000	0.4718	0.6657	6206100040	0.118	0.1664
6204322020	1.1715	1.6529	6204632510	0.059	0.0832	6206100050	0.2359	0.3328

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued		
HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.
6206203010	0.059	0.0832	6209303020	0.2334	0.3293	6211202400	0.1233	0.1740
6206203020	0.059	0.0832	6209303030	0.2334	0.3293	6211202810	0.8016	1.1309
6206301000	1.1796	1.6642	6209303040	0.2334	0.3293	6211202820	0.2466	0.3480
6206302000	0.6488	0.9153	6209900500	0.1154	0.1629	6211202830	0.3083	0.4350
6206303003	0.9436	1.3314	6209901000	0.2917	0.4116	6211203400	0.1233	0.1740
6206303011	0.9436	1.3314	6209902000	0.2917	0.4116	6211203810	0.8016	1.1309
6206303021	0.9436	1.3314	6209903010	0.2917	0.4116	6211203820	0.2466	0.3480
6206303031	0.9436	1.3314	6209903015	0.2917	0.4116	6211203830	0.3083	0.4350
6206303041	0.9436	1.3314	6209903020	0.2917	0.4116	6211204400	0.1233	0.1740
6206303051	0.9436	1.3314	6209903030	0.2917	0.4116	6211204815	0.8016	1.1309
6206303061	0.9436	1.3314	6209903040	0.2917	0.4116	6211204835	0.2466	0.3480
6206401000	0.4128	0.5825	6210109010	0.217	0.3062	6211204860	0.3083	0.4350
6206403010	0.2949	0.4161	6210109040	0.217	0.3062	6211205400	0.1233	0.1740
6206403020	0.2949	0.4161	6210203000	0.0362	0.0510	6211205810	0.8016	1.1309
6206403025	0.2949	0.4161	6210205000	0.0844	0.1191	6211205820	0.2466	0.3480
6206403030	0.2949	0.4161	6210207000	0.1809	0.2552	6211205830	0.3083	0.4350
6206403040	0.2949	0.4161	6210303000	0.0362	0.0510	6211206400	0.1233	0.1740
6206403050	0.2949	0.4161	6210305000	0.0844	0.1191	6211206810	0.8016	1.1309
6206900010	0.5308	0.7489	6210307000	0.0362	0.0510	6211206820	0.2466	0.3480
6206900030	0.2359	0.3328	6210309020	0.422	0.5954	6211206830	0.3083	0.4350
6206900040	0.1769	0.2496	6210403000	0.037	0.0522	6211207400	0.1233	0.1740
6207110000	1.0281	1.4505	6210405020	0.4316	0.6090	6211207810	0.9249	1.3049
6207199010	0.3427	0.4835	6210405031	0.0863	0.1218	6211207820	0.2466	0.3480
6207199030	0.4569	0.6447	6210405039	0.0863	0.1218	6211207830	0.3083	0.4350
6207210010	1.0502	1.4817	6210405040	0.4316	0.6090	6211320003	0.6412	0.9047
6207210020	1.0502	1.4817	6210405050	0.4316	0.6090	6211320007	0.8016	1.1309
6207210030	1.0502	1.4817	6210407000	0.111	0.1566	6211320010	0.9865	1.3919
6207210040	1.0502	1.4817	6210409025	0.111	0.1566	6211320015	0.9865	1.3919
6207220000	0.3501	0.4939	6210409033	0.111	0.1566	6211320025	0.9865	1.3919
6207291000	0.1167	0.1646	6210409045	0.111	0.1566	6211320030	0.9249	1.3049
6207299030	0.1167	0.1646	6210409060	0.111	0.1566	6211320040	0.9249	1.3049
6207911000	1.0852	1.5311	6210503000	0.037	0.0522	6211320050	0.9249	1.3049
6207913010	1.0852	1.5311	6210505020	0.0863	0.1218	6211320060	0.9249	1.3049
6207913020	1.0852	1.5311	6210505031	0.0863	0.1218	6211320070	0.9249	1.3049
6207997520	0.2412	0.3402	6210505039	0.0863	0.1218	6211320075	0.9249	1.3049
6207998510	0.2412	0.3402	6210505040	0.0863	0.1218	6211320081	0.9249	1.3049
6207998520	0.2412	0.3402	6210505055	0.0863	0.1218	6211330003	0.0987	0.1392
6208110000	0.2412	0.3402	6210507000	0.4316	0.6090	6211330007	0.1233	0.1740
6208192000	1.0852	1.5311	6210509050	0.148	0.2088	6211330010	0.3083	0.4350
6208195000	0.1206	0.1701	6210509060	0.148	0.2088	6211330015	0.3083	0.4350
6208199000	0.2412	0.3402	6210509070	0.148	0.2088	6211330017	0.3083	0.4350
6208210010	1.0026	1.4146	6210509090	0.148	0.2088	6211330025	0.37	0.5220
6208210020	1.0026	1.4146	6211111010	0.1206	0.1701	6211330030	0.37	0.5220
6208210030	1.0026	1.4146	6211111020	0.1206	0.1701	6211330035	0.37	0.5220
6208220000	0.118	0.1664	6211118010	1.0852	1.5311	6211330040	0.37	0.5220
6208299030	0.2359	0.3328	6211118020	1.0852	1.5311	6211330054	0.37	0.5220
6208911010	1.0852	1.5311	6211118040	0.2412	0.3402	6211330058	0.37	0.5220
6208911020	1.0852	1.5311	6211121010	0.0603	0.0851	6211330061	0.37	0.5220
6208913010	1.0852	1.5311	6211121020	0.0603	0.0851	6211390510	0.1233	0.1740
6208913020	1.0852	1.5311	6211128010	1.0852	1.5311	6211390520	0.1233	0.1740
6208920010	0.1206	0.1701	6211128020	1.0852	1.5311	6211390530	0.1233	0.1740
6208920020	0.1206	0.1701	621128030	0.6029	0.8506	6211390540	0.1233	0.1740
6208920030	0.1206	0.1701	6211200410	0.7717	1.0888	6211390545	0.1233	0.1740
6208920040	0.1206	0.1701	6211200420	0.0965	0.1361	6211390551	0.1233	0.1740
6208992010	0.0603	0.0851	6211200430	0.7717	1.0888	6211399010	0.2466	0.3480
6208992020	0.0603	0.0851	6211200440	0.0965	0.1361	6211399020	0.2466	0.3480
6208995010	0.2412	0.3402	6211200810	0.3858	0.5444	6211399030	0.2466	0.3480
6208995020	0.2412	0.3402	6211200820	0.3858	0.5444	6211399040	0.2466	0.3480
6208998010	0.2412	0.3402	6211201510	0.7615	1.0744	6211399050	0.2466	0.3480
6208998020	0.2412	0.3402	6211201515	0.2343	0.3306	6211399060	0.2466	0.3480
6209201000	1.0967	1.5474	6211201520	0.6443	0.9091	6211399070	0.2466	0.3480
6209202000	1.039	1.4659	6211201525	0.2929	0.4132	6211399090	0.2466	0.3480
6209203000	0.9236	1.3031	6211201530	0.7615	1.0744	6211420003	0.6412	0.9047
6209205030	0.9236	1.3031	6211201535	0.3515	0.4959	6211420007	0.8016	1.1309
6209205035	0.9236	1.3031	6211201540	0.7615	1.0744	6211420010	0.9865	1.3919
6209205045	0.9236	1.3031	6211201545	0.2929	0.4132	6211420020	0.9865	1.3919
6209205050	0.9236	1.3031	6211201550	0.7615	1.0744	6211420025	1.1099	1.5659
6209301000	0.2917	0.4116	6211201555	0.41	0.5785	6211420030	0.8632	1.2179
6209302000	0.2917	0.4116	6211201560	0.7615	1.0744	6211420040	0.9865	1.3919
6209303010	0.2334	0.3293	6211201565	0.2343	0.3306	6211420054	1.1099	1.5659

IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued			IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued		
HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.	HTS No.	Conv. Factor	Cents/kg.
6211420056	1.1099	1.5659	6216003300	0.5898	0.8321	6302319010	0.7751	1.0936
6211420060	0.9865	1.3919	6216003500	0.5898	0.8321	6302319020	0.7751	1.0936
6211420070	1.1099	1.5659	6216003800	1.1796	1.6642	6302319030	0.7751	1.0936
6211420075	1.1099	1.5659	6216004100	1.1796	1.6642	6302319040	0.7751	1.0936
6211420081	1.1099	1.5659	6217109510	0.9646	1.3610	6302319050	0.7751	1.0936
6211430003	0.0987	0.1392	6217109520	0.1809	0.2552	6302321010	0.5537	0.7812
6211430007	0.1233	0.1740	6217109530	0.2412	0.3402	6302321020	0.3876	0.5468
6211430010	0.2466	0.3480	6217909003	0.9646	1.3610	6302321030	0.5537	0.7812
6211430020	0.2466	0.3480	6217909005	0.1809	0.2552	6302321040	0.3876	0.5468
6211430030	0.2466	0.3480	6217909010	0.2412	0.3402	6302321050	0.3876	0.5468
6211430040	0.2466	0.3480	6217909025	0.9646	1.3610	6302321060	0.3876	0.5468
6211430050	0.2466	0.3480	6217909030	0.1809	0.2552	6302322010	0.5537	0.7812
6211430060	0.2466	0.3480	6217909035	0.2412	0.3402	6302322020	0.3876	0.5468
6211430064	0.3083	0.4350	6217909050	0.9646	1.3610	6302322030	0.5537	0.7812
6211430066	0.2466	0.3480	6217909055	0.1809	0.2552	6302322040	0.3876	0.5468
6211430074	0.3083	0.4350	6217909060	0.2412	0.3402	6302322050	0.3876	0.5468
6211430076	0.37	0.5220	6217909075	0.9646	1.3610	6302322060	0.3876	0.5468
6211430078	0.37	0.5220	6217909080	0.1809	0.2552	6302390030	0.2215	0.3125
6211430091	0.2466	0.3480	6217909085	0.2412	0.3402	6302402010	0.9412	1.3280
6211499010	0.2466	0.3480	6301300010	0.8305	1.1718	6302511000	0.5537	0.7812
6211499020	0.2466	0.3480	6301300020	0.8305	1.1718	6302512000	0.8305	1.1718
6211499030	0.2466	0.3480	6301900030	0.2215	0.3125	6302513000	0.5537	0.7812
6211499040	0.2466	0.3480	6302100005	1.1073	1.5623	6302514000	0.7751	1.0936
6211499050	0.2466	0.3480	6302100008	1.1073	1.5623	6302593020	0.5537	0.7812
6211499060	0.2466	0.3480	6302100015	1.1073	1.5623	6302600010	1.1073	1.5623
6211499070	0.2466	0.3480	6302213010	1.1073	1.5623	6302600020	0.9966	1.4061
6211499080	0.2466	0.3480	6302213020	1.1073	1.5623	6302600030	0.9966	1.4061
6211499090	0.2466	0.3480	6302213030	1.1073	1.5623	6302600030	0.9966	1.4061
6212105010	0.9138	1.2893	6302213040	1.1073	1.5623	6302910005	0.9966	1.4061
6212105020	0.2285	0.3223	6302213050	1.1073	1.5623	6302910015	1.1073	1.5623
6212105030	0.2285	0.3223	6302215010	0.7751	1.0936	6302910025	0.9966	1.4061
6212109010	0.9138	1.2893	6302215020	0.7751	1.0936	6302910035	0.9966	1.4061
6212109020	0.2285	0.3223	6302215030	0.7751	1.0936	6302910045	0.9966	1.4061
6212109040	0.2285	0.3223	6302215040	0.7751	1.0936	6302910050	0.9966	1.4061
6212200010	0.6854	0.9670	6302215050	0.7751	1.0936	6302910060	0.9966	1.4061
6212200020	0.2856	0.4029	6302217010	1.1073	1.5623	6302931000	0.4429	0.6249
6212200030	0.1142	0.1612	6302217020	1.1073	1.5623	6302932000	0.4429	0.6249
6212300010	0.6854	0.9670	6302217030	1.1073	1.5623	6302992000	0.2215	0.3125
6212300020	0.2856	0.4029	6302217040	1.1073	1.5623	6303191100	0.8859	1.2499
6212300030	0.1142	0.1612	6302217050	1.1073	1.5623	6303910010	0.609	0.8593
6212900010	0.1828	0.2579	6302219010	0.7751	1.0936	6303910020	0.609	0.8593
6212900020	0.1828	0.2579	6302219020	0.7751	1.0936	6303921000	0.2768	0.3906
6212900030	0.1828	0.2579	6302219030	0.7751	1.0936	6303922010	0.2768	0.3906
6212900050	0.0914	0.1289	6302219040	0.7751	1.0936	6303922030	0.2768	0.3906
6212900090	0.4112	0.5802	6302219050	0.7751	1.0936	6303922050	0.2768	0.3906
6213201000	1.1187	1.5784	6302221010	0.5537	0.7812	6303990010	0.2768	0.3906
6213202000	1.0069	1.4206	6302221020	0.3876	0.5468	6304111000	0.9966	1.4061
6213900700	0.4475	0.6314	6302221030	0.5537	0.7812	6304113000	0.1107	0.1562
6213901000	0.4475	0.6314	6302221040	0.3876	0.5468	6304190500	0.9966	1.4061
6213902000	0.3356	0.4735	6302221050	0.3876	0.5468	6304191000	1.1073	1.5623
6214300000	0.1142	0.1612	6302221060	0.3876	0.5468	6304191500	0.3876	0.5468
6214400000	0.1142	0.1612	6302222010	0.3876	0.5468	6304192000	0.3876	0.5468
6214900010	0.8567	1.2088	6302222020	0.3876	0.5468	6304193060	0.2215	0.3125
6214900090	0.2285	0.3223	6302222030	0.3876	0.5468	6304910020	0.8859	1.2499
6215100025	0.1142	0.1612	6302290020	0.2215	0.3125	6304910070	0.2215	0.3125
6215200000	0.1142	0.1612	6302313010	1.1073	1.5623	6304920000	0.8859	1.2499
6215900015	1.0281	1.4505	6302313020	1.1073	1.5623	6304996040	0.2215	0.3125
6216000800	0.0685	0.0967	6302313030	1.1073	1.5623	6505001515	1.1189	1.5787
6216001300	0.3427	0.4835	6302313040	1.1073	1.5623	6505001525	0.5594	0.7893
6216001720	0.6397	0.9025	6302313050	1.1073	1.5623	6505001540	1.1189	1.5787
6216001730	0.1599	0.2256	6302315010	0.7751	1.0936	6505002030	0.9412	1.3279
6216001900	0.3427	0.4835	6302315020	0.7751	1.0936	6505002060	0.9412	1.3279
6216002110	0.578	0.8155	6302315030	0.7751	1.0936	6505002545	0.5537	0.7812
6216002120	0.2477	0.3495	6302315040	0.7751	1.0936	6507000000	0.3986	0.5624
6216002410	0.6605	0.9320	6302315050	0.7751	1.0936	9404901000	0.2104	0.2968
6216002425	0.1651	0.2330	6302317010	1.1073	1.5623	9404908020	0.9966	1.4061
6216002600	0.1651	0.2330	6302317020	1.1073	1.5623	9404908040	0.9966	1.4061
6216002910	0.6605	0.9320	6302317030	1.1073	1.5623	9404908505	0.6644	0.9374
6216002925	0.1651	0.2330	6302317040	1.1073	1.5623	9404908536	0.0997	1.4060
6216003100	0.1651	0.2330	6302317050	1.1073	1.5623	9404909505	0.6644	0.9374
						9404909570	0.2658	0.3750

## IMPORT ASSESSMENT TABLE (RAW COTTON FIBER)—Continued

HTS No.	Conv. Factor	Cents/kg.
9619002100 .....	0.8681	1.2248
9619002500 .....	0.1085	0.1531
9619003100 .....	0.9535	1.3453
9619003300 .....	1.1545	1.6289
9619004100 .....	0.2384	0.3364
9619004300 .....	0.2384	0.3364
9619006100 .....	0.8528	1.2032
9619006400 .....	0.2437	0.3438
9619006800 .....	0.3655	0.5157
9619007100 .....	1.1099	1.5660
9619007400 .....	0.2466	0.3479
9619007800 .....	0.2466	0.3479
9619007900 .....	0.2466	0.3479

\* \* \* \* \*

**Authority:** 7 U.S.C. 2101–2118.

Dated: August 21, 2012.

**David R. Shipman,**  
Administrator, Agricultural Marketing  
Service.

[FR Doc. 2012–20951 Filed 8–27–12; 8:45 am]

**BILLING CODE 3410–02–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 2 and 52

[NRC–2010–0012]

RIN 3150–AI77

#### Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule and regulatory guide, issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations related to verification of nuclear power plant construction activities through inspections, tests, analyses, and acceptance criteria (ITAAC) under a combined license, and issuing a revision to Regulatory Guide (RG) 1.215, “Guidance for ITAAC Closure Under 10 CFR [Title 10 of the *Code of Federal Regulations*] Part 52.” The final rule contains new provisions that apply after a licensee has completed an ITAAC and submitted an ITAAC closure notification. The new provisions require licensees to report new information materially altering the basis for determining that inspections, tests, or analyses were performed as required, or that acceptance criteria are met, and to notify the NRC of the completion of all ITAAC activities. In addition, the NRC

is including editorial corrections to existing language in the NRC’s regulations to make that language consistent with language in the Atomic Energy Act of 1954, as amended (AEA). Regulatory Guide 1.215 describes a method that the staff of the NRC considers acceptable for use in satisfying the requirements for documenting the completion of ITAAC.

**DATES:** The effective date is September 27, 2012.

**ADDRESSES:** Please refer to Docket ID NRC–2010–0012 when contacting the NRC about the availability of information for this final rule. You can access information and comment submittals related to this final rule, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2010–0012.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, “Availability of Documents.”

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Mr. Earl R. Libby, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0522; email: [Earl.Libby@nrc.gov](mailto:Earl.Libby@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Comments on the Proposed Rule and Regulatory Guide
  - A. Overview of Public Comments
  - B. Comments on the Proposed Rule
  - C. Comments on the Draft Regulatory Guide DG–1250/RG 1.215
- III. Discussion
  - A. Licensee Programs That Maintain ITAAC Conclusions

- B. Additional ITAAC Notifications
- C. Conforming Changes to 10 CFR 2.340
- IV. Section-by-Section Analysis
- V. Availability of Regulatory Guidance
- VI. Availability of Documents
- VII. Plain Writing
- VIII. Agreement State Compatibility
- IX. Voluntary Consensus Standards
- X. Environmental Impact—Categorical Exclusion
- XI. Paperwork Reduction Act Statement
- XII. Regulatory Analysis
- XIII. Regulatory Flexibility Act Certification
- XIV. Backfitting and Issue Finality
- XV. Congressional Review Act

## I. Background

The Commission first issued 10 CFR part 52, “Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors” on April 18, 1989 (54 FR 15372). Section 52.99, “Inspection during construction,” was included to make it clear that the NRC’s inspection carried out during construction under a combined license would be based on ITAAC proposed by the applicant, approved by the NRC staff, and incorporated in the combined license. At that time, the Commission made it clear that, although 10 CFR 52.99 envisioned a “sign-as-you-go” process in which the NRC staff would sign off on inspection units and notice of the staff’s sign-off would be published in the **Federal Register**, the Commission itself would make no findings with respect to construction until construction was complete. (See 54 FR 15372; April 18, 1989; at 15383 (second column)).

On August 28, 2007 (72 FR 49352), the Commission revised 10 CFR part 52 to enhance the NRC’s regulatory effectiveness and efficiency in implementing its licensing and approval processes. In that revision, the NRC amended 10 CFR 52.99 to require licensees to notify the NRC that the prescribed inspections, tests, or analyses in the ITAAC have been completed and that the acceptance criteria have been met. The revision also requires that these notifications contain sufficient information to demonstrate that the prescribed inspections, tests, or analyses have been performed and that the prescribed acceptance criteria have been met. The statement of considerations for the 2007 rule indicated that this requirement would ensure that combined license applicants and holders were aware that it was the licensee’s burden to demonstrate compliance with the ITAAC and that the notification of ITAAC completion will contain more information than just a simple statement that the licensee

believes the ITAAC had been completed and the acceptance criteria met.

Under Section 185b of the AEA and 10 CFR 52.97(b), a combined license for a nuclear power plant (a “facility”) must contain those ITAAC that are “necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with” the license, the AEA, and the NRC regulations. Following issuance of the combined license, Section 185b of the AEA and 10 CFR 52.99(e) require that the Commission “ensure that the prescribed inspections, tests, and analyses are performed.” Finally, before operation of the facility, Section 185b of the AEA and 10 CFR 52.103(g) require that the Commission find that the “prescribed acceptance criteria *are met*” (emphasis added). This Commission finding will not occur until construction is complete, near the scheduled date for initial fuel load.

As currently required by 10 CFR 52.99(c)(1), the licensee must submit ITAAC closure notifications containing “sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the associated acceptance criteria have been met.” These notifications perform two functions. First, they alert the NRC to the licensee’s completion of the ITAAC<sup>1</sup> and ensure that the NRC has sufficient information to complete all of the activities necessary for the Commission to determine whether all of the ITAAC acceptance criteria have been or will be met (the “will be met” finding is relevant to any hearing on ITAAC under 10 CFR 52.103) before initial operation. Second, they ensure that interested persons will have access to information on both completed and uncompleted ITAAC at a level of detail sufficient to address the AEA Section 189a(1)(B) threshold for requesting a hearing on acceptance criteria. See 72 FR 49352; August 28, 2007, at 49450 (second column).

After completing the 2007 rulemaking, the NRC began developing guidance on the ITAAC closure process and the requirements under 10 CFR 52.99. In October 2009, the NRC issued regulatory guidance for the implementation of the revised 10 CFR 52.99 in RG 1.215, “Guidance for ITAAC Closure Under 10 CFR Part 52.” This RG endorsed guidance developed by the Nuclear Energy Institute (NEI) in NEI 08–01, “Industry Guideline for the ITAAC Closure Process Under 10 CFR

part 52,” Revision 3, issued January 2009 (ADAMS Accession No. ML090270415).

After considering information presented by industry representatives in a series of public meetings, the NRC realized that some additional implementation issues were left unaddressed by the various provisions in 10 CFR part 52. In particular, the NRC determined that the combined license holder should provide additional notifications to the NRC following the notification of ITAAC completion currently required by 10 CFR 52.99(c)(1). The NRC refers to the time after this ITAAC closure notification, but before the date the Commission makes the finding under 10 CFR 52.103(g), as the ITAAC maintenance period. Most recently, the NRC held two public meetings in March 2010 to discuss draft proposed rule text that it made available to the public in February 2010. The NRC considered feedback given from external stakeholders during those meetings in its development of this final rule. Finally, in March 2010, the NRC issued Inspection Procedure 40600, “Licensee Program for ITAAC Management,” which provides guidance to verify that licensees have implemented ITAAC maintenance programs to ensure that structures, systems, and components continue to meet the ITAAC acceptance criteria until the Commission makes the finding under 10 CFR 52.103(g) allowing operation.

## II. Comments on the Proposed Rule and Regulatory Guide

### A. Overview of Public Comments

The NRC published a proposed rule on the Requirements for Maintenance of Inspections, Tests, Analyses and Acceptance Criteria in the **Federal Register** on May 13, 2011 (76 FR 27925). The period for submitting comments on the proposed ITAAC Maintenance rule closed on July 27, 2011. The associated draft regulatory guide for the proposed rule, RG 1.215 “Guidance for ITAAC Closure under 10 CFR Part 52” (DG–1250) was also published in the **Federal Register** on May 13, 2011 (76 FR 27924). The period for submitting comments on the draft guidance closed on July 25, 2011.

### Types of Comments

The NRC received one public comment submission on the proposed rule containing 11 comments from one industry organization, NEI (ADAMS Accession No. ML11208C708). The NRC received one public comment submission, from NEI, containing 22

comments on the RG (ADAMS Accession No. ML11209C487). Comments on the proposed rule are discussed separately from the comments on the draft regulatory guide.

### B. Comments on the Proposed Rule

There were two types of comments on the proposed rule:

1. Comments that were general in nature to the proposed rule language.
2. Comments that were specific in nature to the proposed rule supplementary information.

The NEI submission contained two general comments on the proposed rule and nine specific comments on the proposed rule supplementary information. The NRC has carefully considered the public comments received during the comment period and is adopting a final rule that is substantially similar to the proposed rule with one change to § 52.99(e)(2). The NEI generally supported the approach and objective of the proposed rule and the associated regulatory guidance.

### Comment Identification Format

All comments are identified uniquely by using the formation [Comment X, p. Y] where [Comment X] represents the sequential comment number and [p. Y] represents the comment submission page number.

### 1. General Comments Regarding the Proposed Rule Language

*Comment:* Section 52.99(e)(1) should be revised to state, “\* \* \* the NRC staff’s determination [deleted: of the successful completion of] [added: that] inspections, tests, and analyses contained in the license have been successfully completed [added: and, based solely thereon, that the prescribed acceptance criteria are met].” (Comment 1, p.1)

*NRC Response:* The NRC does not agree with this comment. The change that NEI proposes is not within the scope of this rulemaking, as it does not address the issues of ITAAC maintenance (including public awareness of significant changes to the bases of licensee notifications under § 52.99). In addition, NEI proposed this change as part of a set of changes in their comment submission on the 2006 proposed part 52 rule (ML011100405). In the 2007 rulemaking revising part 52, the NRC declined to make the NEI-proposed change. See 72 FR 49352, 49385 (August 28, 2007). The NEI does not present any new arguments that would cause the NRC to change its 2007 position rejecting the NEI proposal. No

<sup>1</sup> In this discussion, the phrases “completion of ITAAC” and “ITAAC completion” mean that the licensee has determined that: (1) The prescribed inspections, tests, and analyses were performed; and (2) the prescribed acceptance criteria are met.

changes to the final rule language were made as a result of this comment.

*Comment:* The NRC should clarify in the final rule the relationship between paragraphs (c) and (g) of § 52.103, to account for the possibility of interim operation. (Comment 11, p.4)

*NRC Response:* The NRC disagrees with the comment, because the relationship between §§ 52.103(c) and (g) is outside the scope of this rulemaking, and Section 189b(1)(B)(iii) of the AEA clearly provides the Commission with authority to allow interim operation during a pending hearing on acceptance criteria. The NRC may address the subject of interim operation at a later time. No change was made to the final rule language as a result of this comment.

## 2. Specific Comments Regarding the Proposed Rule Supplementary Information

The nine specific comments received on the proposed rule contained recommendations for changes to the supplementary information to correctly reflect common terminology between the rule supplementary information, the associated RG 1.215 and the industry guidance contained within Revision 4 of NEI 08–01 (ADAMS Accession No. ML102010051). These nine specific comments all addressed discussion in the statement of considerations (SOC) (the **SUPPLEMENTARY INFORMATION** section of the **Federal Register** notice of proposed rulemaking); therefore no changes to the final rule language were made as a result of these comments. The SOC for the final rule reflects the NRC consideration of these nine comments.

*Comment:* The phrase “ITAAC closure package” should be replaced with the phrase “ITAAC completion package” in Section III. A, 3d bullet (76 FR 27927) so that the SOC uses terminology which is consistent with that in the associated draft regulatory guide and industry guidance. (Comment 2, p.2)

*NRC Response:* The NRC agrees with the comment. The SOC for the final rule uses the phrase, “ITAAC completion package.”

*Comment:* Delete the second sentence in Section III.B paragraph beginning “When making \* \* \*” to maintain a consistent description of the content of 52.99(c)(1) notifications in the associated draft regulatory guide and industry guidance. (Comment 3, p.2)

*NRC Response:* The NRC agrees with the comment. The SOC for the final rule deleted the sentence “The licensee’s summary statement of the basis for resolving the issue which is the subject of the notification, a discussion of any

action taken, and a list of the key licensee documents supporting the resolution and its implementation, would assist the NRC in making its independent evaluation of the issue” to agree with the RG 1.215 and the industry guidance contained within Revision 4 of NEI 08–01.

*Comment:* Add the term “maintenance” to the list of permissible activities that may be in progress at the time of the 10 CFR 52.103(g) finding. (Comment 4, p.2)

*NRC Response:* The NRC agrees with the comment, because it reflects the intent of the rule and the guidance. The SOC for the final rule added the term “maintenance” to the activities that are allowable during the time of the Commission’s 10 CFR 52.103(g) finding if the programs credited with maintaining the validity of completed ITAAC guide those activities and the activities are not so significant as to exceed a threshold for reporting.

*Comment:* Delete “The NRC understands that the nuclear power industry believes \* \* \*” in Section III.B First paragraph under heading “ITAAC Closure Documentation” because the language is unnecessary. (Comment 5, p.2)

*NRC Response:* The NRC agrees with the comment, because the language is unnecessary. The SOC for the final rule deleted the phrase “The NRC understands that the nuclear power industry believes \* \* \*” from the sentence.

*Comment:* Revise Section III.C for clarity by replacing the text that reads “In both cases, if the presiding officer’s decision resolves the contention favorably \* \* \*” with “In both cases, if the presiding officer finds that the contested acceptance criteria have been met \* \* \*” (Comment 6, p.3)

*NRC Response:* The NRC agrees that the sentence should be revised for clarity, but the SOC will use the phrase “have been or will be met” to reflect both types of possible presiding officer findings. The SOC for the final rule was changed to “In both cases, if the presiding officer finds that the contested acceptance criteria have been or will be met, this does not obviate the need for the Commission to make the required finding under Section 185b of the AEA and 10 CFR 52.103(g) that the acceptance criteria are met.” This change is consistent with similar language in Section IV of the supplementary information section.

*Comment:* Add the phrase “\* \* \* on contested acceptance criteria.” to clarify what decision by the presiding officer the paragraph is referencing. (Comment 7, p.3)

*NRC Response:* The NRC agrees with the comment. The final rule SOC now reads as follows: “The phrase ‘otherwise able to make’ conveys the NRC’s determination that the Commission’s process for supporting a Commission finding on uncontested acceptance criteria is unrelated to and unaffected by the timing of the presiding officer’s initial decision on contested acceptance criteria.”

*Comment:* Replace the term “must” with the term “should” to reflect that ITAAC Maintenance documentation and recordkeeping is an expectation and not a requirement. (Comment 8, p.3)

*NRC Response:* The NRC agrees with the comment. The final rule SOC uses the term “should” to reflect expectations regarding documentation and recordkeeping in support of ITAAC post-closure notifications. However, as explained below, regulatory provisions such as 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities,” Appendix B, “Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,” require the preparation and retention of records supporting the vast majority of ITAAC processes, including the activities supporting the notifications that are required by this final rule.

*Comment:* The comment requested the addition of a sentence stating the NRC proposed no changes to Section IV, Subsection on § 52.99(d). (Comment 9, p.3)

*NRC Response:* The NRC does not agree with this comment. The first sentence of § 52.99(d)(1) contains the following change. “In the event that an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria [deleted: has been] [added: are] met, the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable.” In addition, 52.99(d)(2) was also changed as follows: “In the event that an activity is subject to an ITAAC not derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria [deleted: has been] [added: are] met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under 10 CFR 52.98(f).”

*Comment:* Delete the phrase “and detailed” when referring to licensee notifications required by § 52.99(c) for consistency with Section IV.B (Comment 10, p.4)

*NRC Response:* The NRC agrees with this comment. In the final rule SOC the phrase “and detailed” was deleted. The sentence now reads, “In general, the NRC expects to make the paragraph (c) notifications available shortly after the NRC has received the notifications and concluded that they are complete.” The accompanying detail necessary for the ITAAC notifications under paragraph (c) is developed in regulatory guidance, RG 1.215. This change is consistent with the last paragraph in Section III.B of the **SUPPLEMENTARY INFORMATION**.

### C. Comments on the Draft Regulatory Guide DG-1250/RG 1.215

The NRC published the draft regulatory guide for the proposed rule, RG 1.215, “Guidance for ITAAC Closure Under 10 CFR Part 52” (DG-1250) in the **Federal Register** on May 13, 2011 (76 FR 27924). The period for submitting comments on the draft guidance closed on July 25, 2011.

The NRC received 1 public comment submission on the regulatory guide containing 25 comments from 1 industry organization, NEI (ADAMS Accession No. ML11209C487). The NRC’s responses to the public comments are contained in “Response to Public Comments on Draft Regulatory Guide DG-1250 proposed Revision 1 of RG 1.215, ‘Guidance for ITAAC Closure Under 10 CFR Part 52’” (ADAMS Accession No. ML11284A006).

### III. Discussion

The NRC is requiring the following new notifications with respect to ITAAC closure:

- ITAAC post-closure notification, and
- All ITAAC complete notification.

In general, the reasons for these new notifications are analogous to the reasons presented in the 2007 rulemaking for the existing 10 CFR 52.99(c) notifications: (1) To ensure that the NRC has sufficient information, in light of new information developed or identified after the ITAAC closure notification under 10 CFR 52.99(c)(1), to complete all of the activities necessary for the NRC to make a determination on ITAAC; and (2) to ensure that interested persons have access to information on ITAAC at a level of detail sufficient to address the AEA Section 189a(1)(B) threshold for requesting a hearing. After evaluating the various means of ensuring that the Commission has sufficient information to make a determination on ITAAC, and that interested persons have access to sufficient ITAAC information, the NRC has provided a rule augmented by guidance. The details of timing and

content of the new notifications are captured in guidance that was issued for public comment simultaneously with the proposed rule, as discussed in more detail in Section V, “Availability of Regulatory Guidance,” of this document. The NRC believes that this approach allows more flexibility to adjust the guidance based on lessons learned during early implementation of the ITAAC process under the first combined licenses. Based upon the NRC’s experience with the overall NRC oversight and verification of ITAAC, the notification provisions of the rule, the ITAAC hearing process, and the process for making the 10 CFR 52.103(g) finding, the NRC may revise and supplement the final guidance on the timing and content of notifications. The NRC notes that it would not rely solely on the existence of this rulemaking as a primary basis for the 10 CFR 52.103(g) finding. Rather, the NRC would use a holistic review using results from the NRC’s construction inspection program and ITAAC closure review process as primary factors supporting a conclusion that the acceptance criteria in the combined license are met.

Each of the notification requirements in this rulemaking, and the bases for each of the requirements, are described in Section III.B, “Additional ITAAC Notifications,” of this document. The NRC also included several editorial changes to 10 CFR 52.99 in paragraphs (b), (c)(1), final (c)(3) (former (c)(2)), and (d)(1). In all of these cases, the NRC is replacing the phrase “acceptance criteria have been met” with the phrase “acceptance criteria are met” for consistency with the wording of the requirement in 10 CFR 52.103(g) on the Commission’s ITAAC finding, which is derived directly from wording in the AEA. In addition, the NRC changed 10 CFR 52.99(d)(2) to replace the phrase “ITAAC has been met” with the phrase “prescribed acceptance criteria are met” for consistency with the wording in 10 CFR 52.99(d)(1).

#### A. Licensee Programs That Maintain ITAAC Conclusions

One essential element in ensuring the maintenance of successfully completed ITAAC involves the use of established licensee programs such as the Quality Assurance Program, Problem Identification and Resolution Program, Maintenance/Construction Program, and Design and Configuration Management Program. Each program credited with supporting the maintenance of completed ITAAC should contain attributes that maintain the validity of the ITAAC determination basis. These

program attributes include the following:

- Licensee screening of activities and events for impact on ITAAC;
- Licensee determination of whether supplemental ITAAC notification is required; and
- Licensee supplementation of the ITAAC completion package, as appropriate, to demonstrate that the acceptance criteria continue to be met.

The NRC expects these programs to be fully implemented and effective before the licensee takes credit for them as an appropriate means of supporting ITAAC maintenance. These programs will be subject to NRC inspection.

#### B. Additional ITAAC Notifications

##### ITAAC Post-Closure Notification

The first new notification is contained in 10 CFR 52.99(c)(2), “ITAAC post-closure notifications,” and would be required following the licensee’s ITAAC closure notifications under 10 CFR 52.99(c)(1) until the Commission makes the finding under 10 CFR 52.103(g). This provision in 10 CFR 52.99(c)(2) would require the licensee to provide the NRC with timely notification of new information materially altering the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met (referred to as the *ITAAC determination basis*).

The licensee is responsible for maintaining the validity of the ITAAC conclusions after completion of the ITAAC. If the ITAAC determination basis is materially altered, the licensee is expected to notify the NRC. Through public workshops and stakeholder interaction, the NRC developed thresholds to identify when activities would materially alter the basis for determining that a prescribed inspection, test, or analysis was performed as required, or finding that a prescribed acceptance criterion is met. One obvious case is that a notification under paragraph (c)(2) is required to correct a material error or omission in the original ITAAC closure notification. The “materially altered determination” is further developed in RG 1.215 and in the industry guidance in NEI 08-01, Revision 4.

Section 52.6, “Completeness and accuracy of information,” paragraph (a), requires that information provided to the Commission by a licensee be complete and accurate in all material respects. However, it might be the case that the original closure notification was complete and accurate when sent, but subsequent events materially alter the ITAAC determination basis. Also, a

material error or omission might not be discovered until after the ITAAC closure notification is sent. It is possible that new information materially altering the ITAAC determination basis would not rise to the reporting threshold under 10 CFR 52.6(b). As required by 10 CFR 52.6(b), licensees must notify the Commission of information identified by the licensee as having, for the regulated activity, a significant implication for public health and safety or the common defense and security. Given the primary purpose of ITAAC—to verify that the plant has been constructed and will be operated in compliance with the approved design—the NRC believes that it cannot rely on the provisions in 10 CFR 52.6 for licensee reporting of new information materially altering the ITAAC determination basis. The reasons for this conclusion are as follows:

1. Material errors and omissions in ITAAC closure notifications, relevant to the accuracy and completeness of the documented basis for the Commission's finding on ITAAC, may nonetheless be determined in isolation by a licensee as not having a significant implication for public health and safety or common defense and security.

2. A Commission finding of compliance with acceptance criteria in the ITAAC at the time of the finding is required, under Section 185b of the AEA, in order for the combined license holder to commence operation.

3. The addition of specific reporting requirements addressing information relevant and material to the ITAAC finding ensures that the NRC will get the necessary reports as a matter of regulatory requirement and allows the NRC to determine the timing and content of these reports so that they serve the regulatory needs of the NRC.

Therefore, the NRC intends that these issues will be reported under 10 CFR 52.99(c)(2). In addition to the reporting of material errors and omissions, the NRC has identified other circumstances in which reporting under this provision would be required (i.e., reporting thresholds). These reporting thresholds are described in more detail in Section IV, "Section-by-Section Analysis," of this document.

When making the 10 CFR 52.103(g) finding, the NRC must have sufficient information to determine that the relevant acceptance criteria are met despite the new information prompting the notification under paragraph (c)(2). Apart from the NRC's use of the information, the NRC also believes that public availability of such information is necessary to ensure that interested persons will have sufficient information

to review when preparing a request for a hearing under 10 CFR 52.103, comparable to the information provided under paragraph (c)(1), as described in the Statement of Considerations for the 2007 part 52 rulemaking. See August 28, 2007; 72 FR 49352, at 49384 (second and third columns). Accordingly, the NRC requires that after a licensee identifies new information materially altering the ITAAC determination basis, the licensee must then submit what is essentially a "resolution" notification to the NRC in the form of an ITAAC post-closure notification. The ITAAC post-closure notification, described in paragraph (c)(2), requires the licensee to submit a written notification of the resolution of the circumstances surrounding the identification of new information materially altering the ITAAC determination basis. The ITAAC post-closure notification must contain sufficient information demonstrating that, notwithstanding the information that prompted notification, the prescribed inspections, tests, and analyses have been performed as required and the prescribed acceptance criteria are met. The ITAAC post-closure notifications should explain the need for the notification, outline the resolution of the issue, and confirm that the ITAAC acceptance criteria continue to be met. The ITAAC post-closure notifications must include a level of detail similar to the level of information required in initial ITAAC closure notifications under 10 CFR 52.99(c)(1).

Section 52.99(c)(2) states that licensees must make the notification "in a timely manner." Further discussion of what the NRC considers "timely" can be found in the NRC guidance being issued simultaneously with this final rule, as discussed in more detail in Section V, "Availability of Regulatory Guidance," of this document.

The NRC provides that the notification be available for public review under paragraph (e)(2). This helps ensure public availability and accessibility of important information on ITAAC closure. Further explanation of the basis for the availability requirement is presented under the discussion on 10 CFR 52.99(e)(2) in Section IV, "Section-by-Section Analysis," of this document.

Events that affect completed ITAAC could involve activities that include, but are not limited to, maintenance and engineering programs, or design changes. The NRC expects that licensees will carry out these activities under established programs to maintain ITAAC conclusions and that no post-closure notification will be necessary in most instances. The NRC can have

confidence that prior ITAAC conclusions are maintained, as long as the ITAAC determination basis established by the original ITAAC closure notification is not materially altered. If the ITAAC determination basis is not materially altered, then licensee activities will remain below the notification threshold of 10 CFR 52.99(c)(2). If the ITAAC determination basis is materially altered, then the licensee is required to notify the NRC under 10 CFR 52.99(c)(2).

Although the NRC is requiring that licensees notify the NRC of information materially altering the ITAAC determination basis only after the licensee has evaluated and resolved the issue prompting the notification, the NRC encourages licensees to communicate with the NRC early in its evaluation process. The purpose of this early communication would be to alert the NRC staff to the fact that additional activities may be scheduled that affect a structure, system, or component (including physical security hardware) or program element for which one or more ITAAC have been closed. This will allow the NRC inspection staff to discuss the licensee's plans for resolving the issue to determine if the staff wants to observe any of the upcoming activities for the purpose of making a future staff determination about whether the acceptance criteria for those ITAAC continue to be met.

#### All ITAAC Complete Notification

Another notification that the NRC is requiring is the "all ITAAC complete" notification under 10 CFR 52.99(c)(4). The purpose of this notification is to facilitate the required Commission finding under 10 CFR 52.103(g) that the acceptance criteria in the combined license are met. After, or concurrent with, the last ITAAC closure notification required by 10 CFR 52.99(c)(1), the licensee is required to notify the NRC that all ITAAC are complete. When the licensee submits the all ITAAC complete notification, the NRC would expect that all activities requiring ITAAC post-closure notifications have been completed and that the associated ITAAC determination bases have been updated.

To support the Commission's finding under 10 CFR 52.103(g) that the acceptance criteria in the combined license are met, the NRC staff will, if and when appropriate, send a recommendation to the Commission to make a finding that all of the specified acceptance criteria are met. The staff will consider that all acceptance criteria "are met" if both of the following conditions hold:

- All ITAAC were verified to be met at one time; and
- The licensee provides confidence, in part through the notifications in 10 CFR 52.99(c), that the ITAAC determination bases have been maintained and the ITAAC acceptance criteria continue to be met; and the NRC has no reasonable information to the contrary.

This approach will allow licensees to have ITAAC-related structures, systems, or components, or security or emergency preparedness related hardware, undergoing maintenance or certain other activities at the time of the 10 CFR 52.103(g) finding, if the programs credited with maintaining the validity of completed ITAAC guide those activities and the activities are not so significant as to exceed a threshold for reporting. If a reporting threshold has been exceeded, then the NRC would need to evaluate the licensee's ITAAC post-closure notification to determine whether the ITAAC continue to be met. Reporting thresholds are discussed in more detail in Section IV, "Section-by-Section Analysis," of this document.

#### ITAAC Closure Documentation

This final rule does not contain specific ITAAC documentation and record retention requirements. Consistent with regulatory provisions such as 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," licensees are expected to prepare and retain records supporting the vast majority of ITAAC processes, including the activities supporting the notifications that are required by this final rule. Accordingly, the NRC has not included specific documentation and record retention requirements in this final rule. If the NRC inspections disclose substantial issues with licensees' records on ITAAC maintenance, the NRC will revisit the need for explicit documentation and record retention requirements on ITAAC maintenance.

#### NRC Inspection, Publication of Notices, and Availability of Licensee Notifications

Section 52.99(e)(1) requires that the NRC publish in the **Federal Register** the NRC staff's determination of the successful completion of inspections, tests, and analyses, at appropriate intervals until the last date for submission of requests for hearing under 10 CFR 52.103(a). Section 52.99(e)(2) currently provides that the NRC shall make publicly available the

licensee notifications under current paragraphs (c)(1) and (c)(2). The NRC has revised paragraph (e)(2) to cover all notifications under 10 CFR 52.99(c). In general, the NRC expects to make the paragraph (c) notifications available shortly after the NRC has received the notifications and concluded that they are complete. Furthermore, by the date of the **Federal Register** notice of intended operation and opportunity to request a hearing on whether acceptance criteria are met (under 10 CFR 52.103(a)), the NRC will make available the licensee notifications under paragraphs (c)(1), (c)(2), and (c)(3) that it has received to date.

#### C. Conforming Changes to 10 CFR 2.340

The 2007 10 CFR part 52 rulemaking amended 10 CFR 2.340, "Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses," to clarify, among other things, the scope of the presiding officer's decision in various kinds of NRC proceedings, and remove the requirement for direct Commission involvement in all production and utilization facility licensing proceedings.

Section 2.340(j) was intended to address these matters in connection with the Commission finding on acceptance criteria and any associated hearing under 10 CFR 52.103. In the course of developing this final rule, the NRC determined that 10 CFR 2.340(j) contains several inconsistencies with the statutory language in Section 185b of the AEA, and could more clearly describe possible ways in which a presiding officer decision may lead to a Commission decision on acceptance criteria. The changes, together with the bases for the changes, are described in the following paragraphs.

Section 2.340(j) currently states that the Commission makes a finding under 10 CFR 52.103(g) that acceptance criteria "have been or will be met." This is incorrect; the Commission's finding under 10 CFR 52.103(g) is that the acceptance criteria "are met," which is the statutory requirement under Section 185b of the AEA. To correct this error, the NRC has amended the introductory language of 10 CFR 2.340(j) to use the correct phrase, "acceptance criteria \* \* \* are met \* \* \*."

In addition, 10 CFR 2.340(j), as currently written, does not distinguish among the various circumstances in a contested proceeding where a presiding officer's decision (that acceptance criteria have been met, or will be met) is followed by the overall finding under 10 CFR 52.103(g) that acceptance

criteria are met (as required by Section 185b of the AEA). It is not clear from the current language of § 2.340(j) that the presiding officer's initial decision on a contention that acceptance criteria have been met or will be met, does not obviate the need for the Commission (or the appropriate Director) to make the required finding (under Section 185b of the AEA and 10 CFR 52.103(g)) that the acceptance criteria are met. To illustrate this point by counter example, the presiding officer could make, in the initial decision, a "predictive finding" that acceptance criteria "will be met." Thereafter, the combined licensee holder would complete the prescribed inspection, test and/or analysis and inform the NRC under § 52.99 that the acceptance criteria have been met. Nonetheless, the Commission (or the appropriate Director) may determine—based on, *inter alia*, information submitted to the NRC under 10 CFR 52.99 after the hearing record had closed and the presiding officer's initial decision on the contention is made—that the presiding officer's "predictive finding" was not borne out by events and that the acceptance criteria are not met. To clarify some of the possible paths that the Commission (or appropriate Director) could follow (after the presiding officer's initial decision) in making a finding that acceptance criteria are met, the NRC is revising the language of paragraph (j), thereby making clear that the presiding officer's decision on a contested matter is separate from the overall Commission finding under Section 185b and 10 CFR 52.103(g) that acceptance criteria are met.

#### IV. Section-by-Section Analysis

The primary changes on ITAAC maintenance by the NRC in this rulemaking are to 10 CFR 52.99. The changes to 10 CFR 2.340 are corrections.

##### *Section 2.340 Initial Decision in Certain Contested Proceedings; Immediate Effectiveness of Initial Decisions; Issuance of Authorizations, Permits and Licenses*

##### Section 2.340(j) Issuance of Finding on Acceptance Criteria Under 10 CFR 52.103

Paragraph (j) was amended to allow the Commission (or the appropriate NRC Office Director) in a contested proceeding to make the finding under 10 CFR 52.103(g) that the acceptance criteria in a combined license are met, under certain circumstances that are delineated in greater detail in paragraphs (j)(1) through (4). This compares with the current rule, which

contains only two paragraphs, (j)(1) and (2). The matters covered by paragraph (j)(1) of the current rule are described with greater clarity in paragraphs (j)(1) through (3).

Paragraph (j)(1) clarifies that the Commission may not make the overall 10 CFR 52.103(g) finding unless it is otherwise able to find that all uncontested acceptance criteria (i.e., “acceptance criteria not within the scope of the initial decision of the presiding officer”) are met. The phrase “otherwise able to make” conveys the NRC’s determination that the Commission’s process for supporting a Commission finding on uncontested acceptance criteria is unrelated to and unaffected by the timing of the presiding officer’s initial decision on contested acceptance criteria.

Paragraph (j)(2) clarifies that a presiding officer’s initial decision, which finds that acceptance criteria have been met, is a necessary, but not sufficient prerequisite for the Commission to make a finding that the contested acceptance criteria (i.e., the criteria that are the subject of the presiding officer’s initial decision) are met. The Commission must thereafter—even if the presiding officer’s initial decision finds that the contested acceptance criteria have been met—be able to make a finding that the contested criteria are met after considering: 1) information submitted in the licensee notifications pursuant to 10 CFR 52.99, and 2) the NRC staff’s findings, with respect to these notifications, to issue the overall 10 CFR 52.103 finding. By using the word “thereafter,” the NRC intends to emphasize that the Commission would not make a finding that contested acceptance criteria are met in advance of the presiding officer’s initial decision on those acceptance criteria.

Paragraph (j)(3) expresses the same concept as paragraph (j)(2), but as applied to findings that acceptance criteria will be met. Thus, even if a presiding officer’s initial decision finds that the contested acceptance criteria will be met, the Commission must thereafter be able to make a finding that the contested criteria are met after considering: (1) Information submitted in an ITAAC closure notification pursuant to 10 CFR 52.99(c)(1); 2) information submitted in the licensee notifications pursuant to 10 CFR 52.99(c)(2) and (c)(4); and 3) the NRC staff’s findings with respect to such notifications, to issue the overall 10 CFR 52.103 finding.

Paragraph (j)(4) is the same as the existing provision in 10 CFR 2.340(j)(2). This paragraph provides that the

Commission may make the 10 CFR 52.103(g) finding notwithstanding the pendency of a petition for reconsideration under 10 CFR 2.345, a petition for review under 10 CFR 2.341, a motion for a stay under 10 CFR 2.342, or a petition under 10 CFR 2.206.

The NRC notes that 10 CFR 2.340(j) is not intended to be an exhaustive “roadmap” to a possible 10 CFR 52.103(g) finding that acceptance criteria are met. For example, this provision does not directly address what must occur for the Commission to make a 10 CFR 52.103(g) finding where the presiding officer finds, with respect to a contention, that acceptance criteria have not been or will not be met. The NRC also notes that this provision applies only to contested proceedings. If there is no hearing under 10 CFR 52.103 or if the hearing ends without a presiding officer’s initial decision on the merits (e.g., a withdrawal of the sole party in a proceeding), then 10 CFR 2.340(j) does not govern the process by which the Commission (or the appropriate staff Office Director) makes the 10 CFR 52.103(g) finding.

#### *Section 52.99 Inspection During Construction; ITAAC Schedules and Notifications; NRC Notices*

Although the NRC is not making changes to every paragraph under 10 CFR 52.99, for simplicity, this rulemaking would replace the section in its entirety. Therefore, the NRC is providing a section-by-section discussion for every paragraph in 10 CFR 52.99. For those paragraphs where little or no change is being proposed, the NRC is repeating the section-by-section discussion from the 2007 major revision to 10 CFR part 52 with editorial and conforming changes, as appropriate.

The purpose of this section is to present the requirements to support the NRC’s inspections during construction, including requirements for ITAAC schedules and notifications and for NRC notices of ITAAC closure. The title of this section was changed from *Inspection during construction to Inspections during construction; ITAAC schedules and notifications; NRC Notices* to reflect the contents of this section.

#### *Section 52.99(a) Licensee Schedule for Completing Inspections, Tests, or Analyses*

The NRC is not making any changes to § 52.99(a). Paragraph (a) requires that the licensee submit to the NRC, no later than 1 year after issuance of the combined license or at the start of construction as defined at 10 CFR 50.10, whichever is later, its schedule for

completing the inspections, tests, or analyses in the ITAAC. This provision also requires the licensee to submit updates to the ITAAC schedule every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, licensees must submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under § 52.99(c)(1). The information provided by the licensee will be used by the NRC in developing the NRC’s inspection activities and activities necessary to support the Commission’s finding whether all of the ITAAC are met prior to the licensee’s scheduled date for fuel load. Even in the case where there were no changes to a licensee’s ITAAC schedule during an update cycle, the NRC expects the licensee to notify the NRC that there have been no changes to the schedule.

#### *Section 52.99(b) Licensee and Applicant Conduct of Activities Subject to ITAAC*

The NRC is making an editorial change to the last sentence of § 52.99(b) to replace the words “have been met” with “are met” for consistency with the requirements of Section 185b of the AEA, as implemented in 10 CFR 52.103(g). The purpose of the requirement in 10 CFR 52.99(b) is to clarify that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC are met.

#### *Section 52.99(c) Licensee Notifications*

##### *Section 52.99(c)(1) ITAAC Closure Notification and § 52.99(c)(3) Uncompleted ITAAC Notification*

The NRC has made editorial changes in § 52.99(c)(1) to replace the words “have been met” with “are met.” Section 52.99(c)(1) requires the licensee to notify the NRC that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met. Section 52.99(c)(1) further requires that the notification contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met.

The NRC has renumbered current § 52.99(c)(2) as paragraph (c)(3). In addition, the NRC has made an editorial change to the last sentence in final § 52.99(c)(3) (former 10 CFR 52.99(c)(2))

to replace the words “have been met” with “are met.” Section 52.99(c)(3) requires that, if the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation (consistent with the AEA Section 185b requirement that the Commission, “prior to operation,” find that the acceptance criteria in the combined license are met). The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel, and must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met.

Section 52.99(c) ensures that: (1) The NRC has sufficient information to complete all of the activities necessary for the Commission to make a finding as to whether all of the ITAAC are met prior to initial operation, and (2) interested persons will have access to information on both completed and uncompleted ITAAC at a level of detail sufficient to address the AEA Section 189a(1)(B) threshold for requesting a hearing on acceptance criteria. It is the licensee’s burden to demonstrate compliance with the ITAAC, and the NRC expects the information submitted under paragraph (c)(1) to contain more than just a simple statement that the licensee believes the ITAAC has been completed and the acceptance criteria met. The NRC would expect the notification to be sufficiently complete and detailed so that a reasonable person could understand the basis for the licensee’s representation that the inspections, tests, and analyses have been successfully completed and the acceptance criteria are met. The term “sufficient information” would require, at a minimum, a summary description of the basis for the licensee’s conclusion that the inspections, tests, or analyses have been performed and that the prescribed acceptance criteria are met.

Furthermore, with respect to uncompleted ITAAC, it is the licensee’s burden to demonstrate that it will comply with the ITAAC, and the NRC would expect the information that the licensee submits under proposed paragraph (c)(3) to be sufficiently detailed so that the NRC staff can determine what activities it will need to undertake to determine if the

acceptance criteria for each of the uncompleted ITAAC are met, once the licensee notifies the NRC that those ITAAC have been successfully completed and their acceptance criteria met. The term “sufficient information” requires, at a minimum, a summary description of the basis for the licensee’s conclusion that the inspections, tests, or analyses will be performed and that the prescribed acceptance criteria will be met. In addition, “sufficient information” includes, but is not limited to, a description of the specific procedures and analytical methods to be used for performing the inspections, tests, and analyses and determining that the acceptance criteria are met.

The NRC notes that, even though it did not include a provision requiring the completion of all ITAAC by a certain time prior to the licensee’s scheduled fuel load date, the NRC staff will require some period of time to perform its review of the last ITAAC once the licensee submits its notification that the ITAAC has been successfully completed and the acceptance criteria met. In addition, the Commission itself will require some period of time to perform its review of the staff’s conclusions regarding all of the ITAAC and the staff’s recommendations regarding the Commission finding under 10 CFR 52.103(g).

#### Section 52.99(c)(2) ITAAC Post-Closure Notifications

The NRC has added a new paragraph (c)(2) that would require the licensee to notify the NRC, in a timely manner, of new information that materially alters the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met. The notification must contain sufficient information to demonstrate that, notwithstanding the new information, the prescribed inspections, tests, or analyses have been performed as required, and the prescribed acceptance criteria are met. Fundamentally, those circumstances requiring notification under proposed paragraph (c)(2) fall into the following two categories:

- The information presented or referenced in the original 10 CFR 52.99(c)(1) notification is insufficient, either because it omits material information, or because the information is materially erroneous or incorrect, and the licensee discovers or determines there is a material omission or error after filing the original 10 CFR 52.99(c)(1) notification.
- The information presented or referenced in the original 10 CFR 52.99(c)(1) notification was complete

(i.e., not omitting material information) and accurate (i.e., not materially erroneous), but there is new material information with respect to the subject of the original 10 CFR 52.99(c)(1) notification.

The term “materially altering” refers to situations in which there is information not contained in the 10 CFR 52.99(c)(1) notification that “has a natural tendency or capability to influence an agency decision maker” in either determining whether the prescribed inspection, test, or analysis was performed as required, or finding that the prescribed acceptance criterion is met. See Final Rule; Completeness and Accuracy of Information, December 31, 1987; 52 FR 49362, at 49363. Applying this concept in the context of 10 CFR 52.99(c), information for which notification would be required under paragraph (c)(2) is that information which, considered by itself or when considered in connection with information previously submitted or referenced by the licensee in a paragraph (c)(1) notification, relates to information which is necessary for any of the following:

- The licensee to assert that the prescribed inspections, tests, and analyses have been performed and the acceptance criteria are met;
- The NRC staff to determine if (and provide a recommendation to the Commission as to whether) the prescribed inspections, tests, and analyses were performed and the acceptance criteria are met; or
- The Commission to find that the acceptance criteria are met, as required by Section 185b of the AEA and 10 CFR 52.103(g).

The term “new information” falls into three categories:

- New information (i.e., a “discovery” or new determination identified after the 10 CFR 52.99(c)(1) notification) about the accuracy of material information provided in, referenced by, or necessary to support representations made in that notification.
- New information (i.e., a “discovery” or new determination identified after the 10 CFR 52.99(c)(1) notification) that previously existing information should have been, but was not provided, in the notification or referenced in the supporting documentation (i.e., an omission of material information).
- Information on a “new” event or circumstance (i.e., an event or circumstance occurring after the 10 CFR 52.99(c)(1) notification) that materially affects the accuracy or completeness of the basis—as reported or relied upon in

the § 52.99(c)(1) notification—for the licensee's representation that the acceptance criteria are met.

Applying these concepts, the NRC believes that the circumstances for which reporting under this provision would be required include:

- *Material Error or Omission*—Is there a material error or omission in the original ITAAC closure notification?

- *Post Work Verification (PWV)*—Will the PWV use a significantly different approach than the original performance of the inspection, test, or analysis as described in the original ITAAC notification?

- *Engineering Changes*—Will an engineering change be made that materially alters the determination that the acceptance criteria are met?

- *Additional Items To Be Verified*—Will there be additional items that need to be verified through the ITAAC?

- *Complete and Valid ITAAC Representation*—Will any other licensee activities materially alter the ITAAC determination basis?

Additional guidance on implementing these reporting thresholds is contained in the revision to RG 1.215, being issued simultaneously with this final rule. This guidance is discussed further in Section V, "Availability of Regulatory Guidance," of this document.

Paragraph (c)(2) would require the licensee to submit an ITAAC post-closure notification documenting the resolution of the circumstances surrounding the identification of new material information. By "resolution," the NRC means: (1) The completion of the licensee's technical evaluation of the issue and the determination as to whether the prescribed inspection, test, or analysis was performed as required; (2) licensee completion of any necessary corrective or supplemental actions; (3) licensee documentation of the issue and any necessary corrective or supplemental actions in order to bring the ITAAC determination basis up to date; and (4) ultimate licensee determination about whether the affected acceptance criteria continue to be met.

The information provided in the notification should be at a level of detail comparable to the ITAAC closure notification under paragraph (c)(1). The dual purposes of the proposed paragraph (c)(2) notification, as described in Section III.B, "Additional ITAAC Notifications," of this document, are comparable to the purposes of the ITAAC closure notification in paragraph (c)(1). Thus, the NRC believes that the considerations for the content of the ITAAC closure notification, as discussed in the final 2007 10 CFR part

52 rule, apply to the paragraph (c)(2) notifications. See 72 FR 49450; August 28, 2007 (second column). It is the licensee's burden to demonstrate compliance with the ITAAC, taking into account any new information that materially alters the determination that a prescribed inspection, test, or analysis was performed as required or that a prescribed acceptance criterion is met. The NRC expects the paragraph (c)(2) notification to contain more than just a simple statement that the licensee has concluded, despite the material new information, that the prescribed inspection, test, or analysis was performed as required and that a prescribed acceptance criterion is met. The NRC expects the notification to be sufficiently complete and detailed such that a reasonable person could understand the basis for the licensee's determination in the paragraph (c)(2) notification. The term "sufficient information" is comparable to the meaning given to that term in paragraph (c)(1), and requires, at a minimum, a summary description of the basis for the licensee's determination. In addition, "sufficient information" includes, but is not limited to, a description of the specific procedures and analytical methods used or relied upon to develop or support the licensee's determination. The paragraph (c)(2) notification must be in writing, and the records on which it is based should be retained by the licensee to support possible NRC inspection. Licensees should use the same process for submitting ITAAC post-closure notifications as would be used to submit initial ITAAC closure notifications. The NRC is issuing guidance on implementation of the requirements in proposed paragraph (c)(2), including the level of detail necessary to comply with the requirements of paragraph (c)(2), as discussed in Section V, "Availability of Regulatory Guidance," of this document.

#### *Section 52.99(c)(4) All ITAAC Complete Notification*

The NRC has added a new paragraph (c)(4) which requires the licensee to notify the NRC that all ITAAC are complete (All ITAAC Complete Notification). When the licensee submits the all ITAAC complete notification, the NRC expects that all activities requiring ITAAC post-closure letters have been completed, that the associated ITAAC determination bases have been updated, and that all required notifications under paragraph (c)(2) have been made.

Section 52.99(d) Licensee Determination of Non-Compliance With ITAAC

The NRC has made editorial changes in § 52.99(d)(1) to replace the words "have been met" with, "are met" and in § 52.99(d)(2) to replace the phrase "ITAAC has been met" with the phrase "prescribed acceptance criteria are met." Paragraph (d) states the options that a licensee will have in the event that it is determined that any of the acceptance criteria in the ITAAC are not met. If an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the ITAAC are met, then the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable. A request for an exemption must also be accompanied by an application for a license amendment under 10 CFR 52.98(f). The NRC will consider and take action on the request for exemption and the license amendment application together as an integrated NRC action.

Also, if an activity that is subject to an ITAAC not derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under 10 CFR 52.98(f).

Section 52.99(e) NRC Inspection, Publication of Notices, and Availability of Licensee Notifications

The final rule is substantially the same as the proposed rule with one change to § 52.99(e)(2) to clarify NRC notices to the public. The one language change made to the section, "NRC inspection, publication of notices, and availability of licensee notifications," is to replace the language "The NRC shall make publicly available the licensee notifications under paragraphs (c)(1) through (4) of this section no later than the date of publication of the notice of intended operations required by 10 CFR 52.103(a)" with:

"The NRC shall, no later than the date of publication of the notice of intended operation required by 10 CFR 52.103(a), make publicly available those licensee notifications under paragraph (c) of this section that have been submitted to the NRC at least seven (7) days before that notice." The NRC will make public all paragraph (c) ITAAC notifications that were submitted to the NRC at least seven days before the date of publication of the notice of intended operation required by 10 CFR 52.103(a)

which is, at a minimum, 180 days before the date scheduled for initial loading of fuel. The NRC recognizes that the licensee could submit ITAAC notifications required by paragraph (c) later than the date of publication of the notice of intended operation required by 10 CFR 52.103(a).

**V. Availability of Regulatory Guidance**

Concurrent with this final rule, the NRC is issuing Revision 1 to RG 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52." Revision 1 of RG 1.215 was issued in draft form for public comment with a temporary identification as Draft Regulatory Guide, DG-1250 (76 FR 27924, May 13, 2011). This guidance series was developed to describe, and make available to the public, information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

In Revision 1 of RG 1.215, the NRC is endorsing Revision 4 to the existing industry ITAAC closure guidance in NEI 08-01, submitted to the NRC for endorsement on July 16, 2010 (Package ADAMS Accession No. ML102010076). The revised guidance is intended to provide an acceptable method by which licensees can implement the new requirements in this final rulemaking.

The proposed final rule requirements for ITAAC maintenance and the draft RG 1.215 were presented to the Advisory Committee on Reactor Safeguards (ACRS) on December 1, 2011 (ADAMS Accession No. ML11342A075). The ACRS conclusion and recommendations were that: (1) The proposed ITAAC rule, "Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria," meets the goal of ensuring maintenance of ITAAC validity and should be approved. (2) The approach in RG 1.215, Revision 1, for closing and maintaining ITAAC should be revised to include an assessment that ensures a change does not introduce unintended

consequences. The assessment should also include an evaluation that confirms the original inspections, tests, and analyses and their acceptance criteria are still valid and assures the functionality originally intended. (3) After revision, RG 1.215, Revision 1, should be issued. The NRC agrees to clarify RG 1.215 and the following sentence is included in Section B, where the requirements of NEI 08-01, section 8 are discussed: "The design and configuration control program should include an assessment and evaluation that confirms that the ITAAC potentially affected by a proposed change are still valid and assures the functionality originally intended."

**VI. Availability of Documents**

The NRC is making the documents identified in the following table available to interested persons through one or more of the following methods as indicated. To access documents related to this action, see the ADDRESSES section of this document.

Document	PDR	Web	ADAMS
SECY-12-0030, "Final Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (RIN 3150-A177)".	X	X	ML113390369
Regulatory Analysis for Final Rule—Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria, January 2012.	X	X	ML120100062
Regulatory Analysis for Proposed Rule—Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria, February 2011.	X	X	ML110040395
ACRS Letter, Proposed Requirements for ITAAC (Inspections, Tests, Analyses, and Acceptance Criteria) Maintenance and Draft Final Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52".	X	X	ML11342A075
Staff Requirements Memorandum for SECY-10-0117, "Proposed Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (RIN 3150-A177)," February 4, 2011.	X	X	ML110350185
SECY-10-0117, "Proposed Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (RIN 3150-A177)".	X	X	ML101440146
ITAAC Proposed Rule FEDERAL REGISTER Notice .....	X	X	ML101440177
Regulatory Analysis for Proposed Rule re ITAAC, May 2010 .....			ML101440359
SECY-09-0119, "Staff Progress in Resolving Issues Associated with Inspections, Tests, Analyses and Acceptance Criteria," August 26, 2009.	X	X	ML091980372 (Package)
SRM-M090922, "Staff Requirements—Periodic Briefing on New Reactor Issues—Progress in Resolving Issues Associated with Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC), 9:30 a.m., Tuesday, September 22, 2009, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open To Public Attendance)," October 16, 2009.	X	X	ML092890658
Inspection Procedure 40600, "Licensee Program for ITAAC Management" .....	X	X	ML072530607
Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52," Revision 1, January 2012.	X	X	ML112580018
Regulatory Guide 1.215, "Guidance for ITAAC Closure Under 10 CFR Part 52," Revision 0, October 31, 2009.	X	X	ML091480076
NEI Comments on ITAAC Maintenance Proposed Rule .....	X	X	ML11208C708
NEI Comments on DG-1250 Guidance for ITAAC Closure .....	X	X	ML11209C487
Staff Responses to Public Comments on DG-1250 .....			ML11284A006
NEI 08-01, "Industry Guideline for the ITAAC Closure Process Under 10 CFR part 52," Revision 3, January 2009.	X	X	ML090270415
NEI 08-01, "Industry Guideline for the ITAAC Closure Process Under 10 CFR part 52," Revision 4.	X	X	ML102010076 (Package)
			ML102010051
NEI Comments on NRC Plans to Amend Regulations Related to ITAAC Maintenance .....	X	X	ML101300103
Russell Bell Ltr. RE: Response to Nuclear Energy Institute on NRC Plans to Amend Regulations Related to ITAAC Maintenance.	X	X	ML101590526
Draft Regulatory Guide DG-1250 (Proposed Revision 1 of Regulatory Guide 1.215), "Guidance for ITAAC Closure Under 10 CFR Part 52".	X	X	ML102530401

Document	PDR	Web	ADAMS
NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4, September 2004.	X	X	ML042820192

## VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

## VIII. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws. Category "NRC" regulations do not confer regulatory authority on the State.

## IX. Voluntary Consensus Standard

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The requirements in this rulemaking address procedural and information collection and reporting requirements necessary to support the NRC's regulatory activities on combined licenses under 10 CFR part 52, and to facilitate the NRC's conduct of hearings on ITAAC which may be held under Section 189 of the AEA. These requirements do not establish standards or substantive requirements with which combined license holders must comply. Thus, this rulemaking does not constitute establishment of a standard containing generally applicable requirements falling within the purview of the National Technology Transfer and Advancement Act and the

implementing guidance issued by the Office of Management and Budget (OMB).

## X. Environmental Impact—Categorical Exclusion

The NRC has determined that these amendments fall within the types of actions described as categorical exclusions under 10 CFR 51.22(c)(2) and (c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

## XI. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by OMB, approval number 3150-0151.

The burden to the public for these information collections is estimated to average 22 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to [INFOCOLLECTS.RESOURCE@NRC.GOV](mailto:INFOCOLLECTS.RESOURCE@NRC.GOV); and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0151), Office of Management and Budget, Washington, DC 20503. You may also email comments to [Chad\\_S\\_Whiteman@omb.eop.gov](mailto:Chad_S_Whiteman@omb.eop.gov) or comment by telephone at 202-395-4718.

### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## XII. Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the

costs and benefits of the alternatives considered by the Commission.

The regulatory analysis is in ADAMS under Accession No. ML120100062.

The regulatory analysis may also be viewed and downloaded electronically via the Federal rulemaking Web site at <http://www.regulations.gov> by searching on Docket ID NRC-2010-0012.

The regulatory analysis examines the benefits and costs of the final rule requirements. The key findings of the analysis are as follows:

- *Total Cost to Industry.* The final rule would result in additional reporting and recordkeeping costs for the industry. The total annual cost for the rule is \$244,800. The total present value of the costs is estimated at \$940,000 (using a 7-percent discount rate) and \$1,021,000 (using a 3-percent discount rate) over the next 20 years.

- *Annual Impact to the Economy.* Under the Congressional Review Act of 1996 and as a result of consultations with the Office of Information and Regulatory Affairs of the Office of Management and Budget, the NRC has determined that these actions are not major rules. This determination is based on the estimated one-time costs (expected to occur within the first year) of implementing this action for the total industry is not to exceed \$111,350.

- *Value of Benefits Not Reflected Above.* The cost figures shown above do not reflect the value of the benefits of the proposed rule. These benefits are evaluated qualitatively in Section 3.1 of the regulatory analysis. This regulatory analysis concluded the costs of the rule are justified in view of the qualitative benefits.

- *Costs to NRC.* The NRC would incur costs to review and process licensee responses to the proposed reporting requirements. The total annual costs are approximately \$293,760. The NRC will incur one-time costs for developing the infrastructure to process the new notifications, developing guidance, and training NRC staff on the proposed requirements estimated to be \$49,920.

- *Decision Rationale.* Although the NRC did not quantify the benefits of this rule, the staff did qualitatively examine benefits and concluded that the rule would provide enhanced regulatory effectiveness and efficiency and enhanced openness of the regulatory process. The sum total of the requirements in the proposed rule

would be to establish reporting of issues affecting closed ITAAC.

### XIII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

### XIV. Backfitting and Issue Finality

The NRC has determined that neither the backfit rule, 10 CFR 50.109, nor any of the finality provisions in 10 CFR part 52, apply to this final rule. Therefore, a backfit analysis is not required because the proposed ITAAC maintenance rule does not contain any provisions that would impose backfitting as defined in the backfit rule, nor does it contain provisions that are inconsistent with the finality provisions applicable to applicants for or holders of combined licenses in 10 CFR part 52.

The final rule applies only to holders of combined licenses. The backfitting provisions in 10 CFR 50.109 and the finality provisions in Subpart C of 10 CFR part 52 protect holders of combined licenses (with the exception discussed further in this document). Subpart C of 10 CFR part 52 contains issue finality provisions which protect combined license applicants, but that protection extends only to issue resolution of matters resolved in referenced early site permits, standard design certifications, standard design approvals, or manufactured reactors. This rule does not alter issue resolution associated with referenced early site permits, standard design certifications, standard design approvals, or manufactured reactors. Instead, this final rule addresses requirements concerning the collection and reporting of information to the NRC to support the Commission's finding that ITAAC are met, and the conduct of hearings addressing whether prescribed inspections, tests, and analyses have been or will be performed and whether the prescribed acceptance criteria have been or will be met. Neither the backfit rule nor the issue finality provisions of 10 CFR part 52 apply to information collection and reporting requirements.

To the extent that the rule revises these information collection and reporting requirements for future

combined licenses, these requirements do not constitute backfitting or are otherwise inconsistent with the finality provisions in 10 CFR part 52, for the additional reason that the ITAAC Maintenance Rule's requirements are prospective in nature and effect. Neither the backfit rule nor the issue finality provisions in 10 CFR part 52 were intended to apply to every NRC action, which substantially changes the obligations of future licensees under 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis or other evaluation for this final rule.

### XV. Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that these actions are not major rules and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

#### List of Subjects

##### 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

##### 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 52.

### PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** Atomic Energy Act secs.161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42

U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 105, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, as amended by section 3100(s), Pub. L. 104–134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102 (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553; Atomic Energy Act sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act sec. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239).

■ 2. In § 2.340, revise paragraph (j) to read as follows:

#### § 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits and licenses.

\* \* \* \* \*

(j) *Issuance of finding on acceptance criteria under 10 CFR 52.103.* The Commission, the Director of the Office of New Reactors, or the Director of the Office of Nuclear Reactor Regulation, as appropriate, shall make the finding under 10 CFR 52.103(g) that acceptance criteria in a combined license are met within 10 days from the date of the presiding officer's initial decision:

(1) If the Commission or the appropriate director is otherwise able to make the finding under 10 CFR 52.103(g) that the prescribed acceptance criteria are met for those acceptance criteria not within the scope of the initial decision of the presiding officer;

(2) If the presiding officer's initial decision—with respect to contentions that the prescribed acceptance criteria have not been met—finds that those acceptance criteria have been met, and the Commission or the appropriate director thereafter is able to make the finding that those acceptance criteria are met;

(3) If the presiding officer's initial decision—with respect to contentions

that the prescribed acceptance criteria will not be met—finds that those acceptance criteria will be met, and the Commission or the appropriate director thereafter is able to make the finding that those acceptance criteria are met; and

(4) Notwithstanding the pendency of a petition for reconsideration under 10 CFR 2.345, a petition for review under 10 CFR 2.341, or a motion for stay under 10 CFR 2.342, or the filing of a petition under 10 CFR 2.206.

\* \* \* \* \*

## PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

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

**Authority:** Atomic Energy Act secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2201, 2167, 2169, 2232, 2233, 2235, 2236, 2239, 2282); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

■ 4. Revise § 52.99 to read as follows:

### § 52.99 Inspection during construction; ITAAC schedules and notifications; NRC notices.

(a) *Licensee schedule for completing inspections, tests, or analyses.* The licensee shall submit to the NRC, no later than 1 year after issuance of the combined license or at the start of construction as defined at 10 CFR 50.10(a), whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. The licensee shall submit updates to the ITAAC schedules every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel, the licensee shall submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under paragraph (c)(1) of this section.

(b) *Licensee and applicant conduct of activities subject to ITAAC.* With respect to activities subject to an ITAAC, an applicant for a combined license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any one of the prescribed acceptance criteria are met.

(c) *Licensee notifications*—(1) *ITAAC closure notification.* The licensee shall notify the NRC that prescribed inspections, tests, and analyses have been performed and that the prescribed

acceptance criteria are met. The notification must contain sufficient information to demonstrate that the prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met.

(2) *ITAAC post-closure notifications.* Following the licensee's ITAAC closure notifications under paragraph (c)(1) of this section until the Commission makes the finding under 10 CFR 52.103(g), the licensee shall notify the NRC, in a timely manner, of new information that materially alters the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met. The notification must contain sufficient information to demonstrate that, notwithstanding the new information, the prescribed inspections, tests, or analyses have been performed as required, and the prescribed acceptance criteria are met.

(3) *Uncompleted ITAAC notification.* If the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel, the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee shall notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation. The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel, and must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met, including, but not limited to, a description of the specific procedures and analytical methods to be used for performing the prescribed inspections, tests, and analyses and determining that the prescribed acceptance criteria are met.

(4) *All ITAAC complete notification.* The licensee shall notify the NRC that all ITAAC are complete.

(d) *Licensee determination of non-compliance with ITAAC.* (1) In the event that an activity is subject to an ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable.

A request for an exemption must also be accompanied by a request for a

license amendment under 10 CFR 52.98(f).

(2) In the event that an activity is subject to an ITAAC not derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under 10 CFR 52.98(f).

(e) *NRC inspection, publication of notices, and availability of licensee notifications.* The NRC shall ensure that the prescribed inspections, tests, and analyses in the ITAAC are performed.

(1) At appropriate intervals until the last date for submission of requests for hearing under 10 CFR 52.103(a), the NRC shall publish notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses.

(2) The NRC shall make publicly available the licensee notifications under paragraph (c) of this section. The NRC shall, no later than the date of publication of the notice of intended operation required by 10 CFR 52.103(a), make publicly available those licensee notifications under paragraph (c) of this section that have been submitted to the NRC at least seven (7) days before that notice.

Dated at Rockville, Maryland, this 22nd day of August, 2012.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2012–21207 Filed 8–27–12; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2011–1045; Directorate Identifier 2011–NE–32–AD; Amendment 39–17168; AD 2012–17–05]

RIN 2120-AA64

#### Airworthiness Directives; Honeywell International Inc. Turbofan Engines

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Honeywell International Inc. models TFE731–4, –4R, –5, –5R, –5AR, and –5BR series turbofan engines. This AD was prompted by a report of a rim/web separation of a first stage low-pressure

turbine (LPT1) rotor assembly. This AD requires replacing affected LPT1 rotor assemblies with assemblies eligible for installation. We are issuing this AD to prevent uncontained disk separation, engine failure, and damage to the airplane.

**DATES:** This AD is effective October 2, 2012.

**ADDRESSES:** For service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034-2802; Web site: <http://portal.honeywell.com>; or call Honeywell toll free at phone: 800-601-3099 (U.S./Canada) or 602-365-3099 (International Direct). You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; phone: 562-627-5246; fax: 562-627-5210; email: [joseph.costa@faa.gov](mailto:joseph.costa@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on February 21, 2012 (77 FR 9868). That NPRM proposed to require replacing affected LPT1 rotor assemblies with LPT1 rotor assemblies eligible for installation.

##### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the one comment

received on the proposal and the FAA's response to the comment.

#### Request To Clarify Definition Paragraph

One commenter requested we change a term in paragraph (h) of the proposed AD. The commenter requested that "tie rod" be changed to "tie shaft." The commenter said that making this change would allow a level of disassembly to access the inlet total temperature harness and other hardware without affecting the low-pressure turbine (LPT) module.

We do not agree. Mandating access to the LPT module in the AD and suspect disks when the tie rod is unstretched is consistent in achieving AD compliance sooner for the Falcon 20 and CASA 101 airplanes. LPT disk separations in these airplanes have been determined to be higher risk than for engines in other applications. We did not change the AD.

#### Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 9868, February 21, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 9868, February 21, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

#### Costs of Compliance

We estimate that this AD will affect 1,550 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 work-hour per engine to perform the actions at next access and 165 work-hours per unscheduled engine disassembly, and that the average labor rate is \$85 per work-hour. Replacement parts will cost about \$175,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$35,195,488 per year.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

**2012-17-05 Honeywell International Inc. (formerly AlliedSignal Inc., formerly Garret Turbine Engine Company):** Amendment 39-17168; Docket No. FAA-2011-1045; Directorate Identifier 2011-NE-32-AD.

**(a) Effective Date**

This AD is effective October 2, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Honeywell International Inc.:

(1) Model TFE731-5 series turbofan engines, with a first stage low-pressure turbine (LPT1) rotor assembly, part number (P/N) 3075184-2, 3075184-3, or 3075184-4, installed, and

(2) Models TFE731-5AR and -5BR series turbofan engines, with a first stage LPT1 rotor assembly, P/N 3075447-1, 3075447-2, 3075447-4, 3075713-1, 3075713-2, 3075713-3, or 3074748-5, installed, and

(3) Models TFE731-4, -4R, -5AR, -5BR, and -5R series turbofan engines, with an LPT1 rotor assembly, P/N 3074748-4, 3074748-5, 3075447-1, 3075447-2, 3075447-4, 3075713-1, 3075713-2, or 3075713-3, installed.

**(d) Unsafe Condition**

This AD was prompted by a report of a rim/web separation of an LPT1 rotor assembly. We are issuing this AD to prevent uncontained disk separation, engine failure, and damage to the airplane.

**(e) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(f) Engines Installed in Dassault-Aviation Falcon 20 and Construcciones Aeronauticas, S.A. (CASA) 101 Airplanes**

(1) Remove the LPT1 rotor assembly at the next access to the LPT1 rotor assembly or at the next major periodic inspection, not to exceed 2,600 hours-in-service since last major periodic inspection, or 8 years after the effective date of this AD, whichever occurs first.

(2) Install an LPT1 rotor assembly that is eligible for installation.

**(g) Engines Not Installed in Dassault-Aviation Falcon 20 or CASA 101 Airplanes**

(1) Remove the LPT1 rotor assembly at the next core zone inspection, not to exceed 5,100 hours-in-service since last core zone inspection, or at the next time the LPT1 rotor disc is removed for cause, or 8 years after the effective date of this AD, whichever occurs first.

(2) Install an LPT1 rotor assembly that is eligible for installation.

**(h) Definitions**

(1) For the purpose of this AD, “next access” is when the low-pressure tie rod is unstretched.

(2) For the purpose of this AD, an LPT1 rotor assembly “eligible for installation” is an LPT1 rotor assembly not having a P/N listed in this AD.

**(i) Installation Prohibition**

After the effective date of this AD, do not install any LPT1 rotor assembly listed by P/N in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, into any engine.

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

The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures in 14 CFR 39.19 to request an AMOC.

**(k) Related Information**

(1) For more information about this AD, contact Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; phone: 562-627-5246; fax: 562-627-5210; email: [joseph.costa@faa.gov](mailto:joseph.costa@faa.gov).

(2) Honeywell International Inc. Service Bulletin (SB) No. TFE731-72-3768; SB No. TFE731-72-3769; and SB No. TFE731-72-3770, pertain to the subject of this AD.

(3) For service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034-2802; Web site: <http://portal.honeywell.com>; or call Honeywell toll free at phone: 800-601-3099 (U.S./Canada) or 602-365-3099 (International Direct).

**(l) Material Incorporated by Reference**

None.

Issued in Burlington, Massachusetts, on August 14, 2012.

**Robert G. Mann,**

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

[FR Doc. 2012-21010 Filed 8-27-12; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 97**

[Docket No. 30857; Amdt. No. 3492]

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

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

**ACTION:** Final rule.

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

instrument flight rules at the affected airports.

**DATES:** This rule is effective August 28, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 28, 2012.

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

*For Examination—*

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal-register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal-register/code_of_federal_regulations/ibr_locations.html).

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

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

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

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP

for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, and 8260-15B when required by an entry on 8260-15A.

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

#### The Rule

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

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

where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

#### Conclusion

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

#### List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on August 17, 2012.

#### Ray Towles,

*Deputy Director, Flight Standards Service.*

#### Adoption of the Amendment

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

#### PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

*Effective 20 September 2012*

Cold Bay, AK, Cold Bay, ILS OR LOC/DME RWY 15, Amdt 18  
Cold Bay, AK, Cold Bay, LOC/DME BC RWY 33, Amdt 10  
Fairbanks, AK, Fairbanks Intl, ILS OR LOC RWY 20R, ILS RWY 20R (SA CAT I), ILS RWY 20R (SA CAT II), Amdt 24  
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) Y RWY 2L, Orig-B

Fairbanks, AK, Fairbanks Intl, RNAV (GPS) Y RWY 20R, Amdt 1  
Fairbanks, AK, Fairbanks Intl, RNAV (RNP) Z RWY 2L, Orig  
Fairbanks, AK, Fairbanks Intl, RNAV (RNP) Z RWY 20R, Orig  
Riverside, CA, Riverside Muni, ILS OR LOC RWY 9, Amdt 8  
Riverside, CA, Riverside Muni, RNAV (GPS) RWY 9, Amdt 2  
Riverside, CA, Riverside Muni, Takeoff Minimums and Obstacle DP, Amdt 10  
Riverside, CA, Riverside Muni, VOR RWY 9, Amdt 1  
Sterling, CO, Sterling Muni, GPS RWY 33, Orig, CANCELED  
Sterling, CO, Sterling Muni, NDB RWY 33, Amdt 3  
Sterling, CO, Sterling Muni, RNAV (GPS) RWY 15, Orig  
Sterling, CO, Sterling Muni, RNAV (GPS) RWY 33, Orig  
Sterling, CO, Sterling Muni, Takeoff Minimums and Obstacle DP, Amdt 1  
Apopka, FL, Orlando Apopka, RNAV (GPS)-A, Orig  
Apopka, FL, Orlando Apopka, RNAV (GPS)-B, Orig  
Apopka, FL, Orlando Apopka, Takeoff Minimums and Obstacle DP, Orig  
Okeechobee, FL, Okeechobee County, RNAV (GPS) RWY 5, Amdt 1A  
Okeechobee, FL, Okeechobee County, RNAV (GPS) RWY 14, Amdt 1  
Okeechobee, FL, Okeechobee County, RNAV (GPS) RWY 23, Amdt 2  
Okeechobee, FL, Okeechobee County, RNAV (GPS) RWY 32, Orig-B  
Williamsburg, KY, Williamsburg-Whitley County, LOC/DME RWY 20, Orig  
Williamsburg, KY, Williamsburg-Whitley County, RNAV (GPS) RWY 2, Amdt 2  
Williamsburg, KY, Williamsburg-Whitley County, RNAV (GPS) RWY 20, Amdt 1  
Williamsburg, KY, Williamsburg-Whitley County, Takeoff Minimums and Obstacle DP, Amdt 1  
Williamsburg, KY, Williamsburg-Whitley County, VOR/DME RWY 20, Orig-A  
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, ILS OR LOC RWY 22R, Amdt 11  
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, RNAV (GPS) RWY 4L, Amdt 2  
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, RNAV (GPS) RWY 22R, Amdt 2  
Bedford, MA, Laurence G Hanscom FLD, ILS OR LOC RWY 11, Amdt 26  
Bedford, MA, Laurence G Hanscom FLD, ILS OR LOC RWY 29, Amdt 7  
Bedford, MA, Laurence G Hanscom FLD, NDB RWY 29, Amdt 8  
Bedford, MA, Laurence G Hanscom FLD, RNAV (GPS) RWY 23, Orig-A

Bedford, MA, Laurence G Hanscom  
FLD, RNAV (GPS) Z RWY 11, Amdt  
1

Bedford, MA, Laurence G Hanscom  
FLD, RNAV (GPS) Z RWY 29, Amdt  
1

Bedford, MA, Laurence G Hanscom  
FLD, RNAV (RNP) Y RWY 11, Orig

Bedford, MA, Laurence G Hanscom  
FLD, RNAV (RNP) Y RWY 29, Orig

Bedford, MA, Laurence G Hanscom  
FLD, VOR RWY 23, Amdt 9

Oxford, ME, Oxford County Rgnl, GPS  
RWY 33, Orig, CANCELED

Oxford, ME, Oxford County Rgnl, RNAV  
(GPS) RWY 15, Orig

Oxford, ME, Oxford County Rgnl, RNAV  
(GPS) RWY 33, Orig

St Louis, MO, Lambert-St Louis Intl,  
RNAV (RNP) Z RWY 11, Orig

St Louis, MO, Lambert-St Louis Intl,  
RNAV (RNP) Z RWY 12L, Orig

St Louis, MO, Lambert-St Louis Intl,  
RNAV (RNP) Z RWY 29, Orig

St Louis, MO, Lambert-St Louis Intl,  
RNAV (RNP) Z RWY 30R, Orig

Kearney, NE., Kearney Rgnl, ILS OR  
LOC RWY 36, Amdt 2

Kearney, NE., Kearney Rgnl, RNAV  
(GPS) RWY 13, Orig

Omaha, NE., Eppley Airfield, RNAV  
(GPS) Y RWY 14L, Amdt 1A

Omaha, NE., Eppley Airfield, RNAV  
(GPS) Y RWY 14R, Amdt 1A

Omaha, NE., Eppley Airfield, RNAV  
(GPS) Y RWY 18, Amdt 2A

Omaha, NE., Eppley Airfield, RNAV  
(GPS) Y RWY 32L, Amdt 1A

Omaha, NE., Eppley Airfield, RNAV  
(GPS) Y RWY 32R, Orig-B

Omaha, NE., Eppley Airfield, RNAV  
(RNP) Z RWY 14L, Orig

Omaha, NE., Eppley Airfield, RNAV  
(RNP) Z RWY 14R, Orig

Omaha, NE., Eppley Airfield, RNAV  
(RNP) Z RWY 18, Orig

Omaha, NE., Eppley Airfield, RNAV  
(RNP) Z RWY 32L, Orig

Omaha, NE., Eppley Airfield, RNAV  
(RNP) Z RWY 32R, Orig

Omaha, NE., Eppley Airfield, RNAV  
(RNP) Z RWY 36, Orig

Trenton, NJ, Trenton Mercer, GPS RWY  
16, Orig-B, CANCELED

Trenton, NJ, Trenton Mercer, GPS RWY  
34, Orig-A, CANCELED

Trenton, NJ, Trenton Mercer, ILS OR  
LOC RWY 6, Amdt 10

Trenton, NJ, Trenton Mercer, NDB RWY  
6, Amdt 7

Trenton, NJ, Trenton Mercer, RNAV  
(GPS) RWY 16, Orig

Trenton, NJ, Trenton Mercer, RNAV  
(GPS) RWY 34, Orig

Trenton, NJ, Trenton Mercer, RNAV  
(GPS) Z RWY 6, Orig

Trenton, NJ, Trenton Mercer, RNAV  
(GPS) Z RWY 24, Orig

Trenton, NJ, Trenton Mercer, RNAV  
(RNP) Y RWY 6, Orig

Trenton, NJ, Trenton Mercer, VOR OR  
GPS RWY 24, Amdt 4B, CANCELED

Albuquerque, NM, Albuquerque Intl  
Sunport, RNAV (GPS) Y RWY 3, Orig-  
B

Albuquerque, NM, Albuquerque Intl  
Sunport, RNAV (GPS) Y RWY 8, Orig-  
A

Albuquerque, NM, Albuquerque Intl  
Sunport, RNAV (RNP) Y RWY 21,  
Orig

Albuquerque, NM, Albuquerque Intl  
Sunport, RNAV (RNP) Z RWY 3, Orig

Albuquerque, NM, Albuquerque Intl  
Sunport, RNAV (RNP) Z RWY 8, Orig

Albuquerque, NM, Albuquerque Intl  
Sunport, RNAV (RNP) Z RWY 21,  
Orig

Roseburg, OR, Roseburg Rgnl, Takeoff  
Minimums and Obstacle DP, Amdt 7

Providence, RI, Theodore Francis Green  
State, RNAV (GPS) Y RWY 23, Amdt  
1A

Providence, RI, Theodore Francis Green  
State, RNAV (RNP) Z RWY 23, Orig

Harlingen, TX, Valley Intl, RNAV (GPS)  
Y RWY 13, Amdt 1A

Harlingen, TX, Valley Intl, RNAV (GPS)  
Y RWY 17R, Amdt 2

Harlingen, TX, Valley Intl, RNAV (GPS)  
Y RWY 31, Amdt 1A

Harlingen, TX, Valley Intl, RNAV (GPS)  
Y RWY 35L, Amdt 1A

Harlingen, TX, Valley Intl, RNAV (RNP)  
Z RWY 13, Orig

Harlingen, TX, Valley Intl, RNAV (RNP)  
Z RWY 17R, Orig

Harlingen, TX, Valley Intl, RNAV (RNP)  
Z RWY 31, Orig

Harlingen, TX, Valley Intl, RNAV (RNP)  
Z RWY 35L, Orig

Chase City, VA, Chase City Muni, RNAV  
(GPS) RWY 18, Amdt 1

Chase City, VA, Chase City Muni, RNAV  
(GPS) RWY 36, Amdt 1

Pullman/Moscow, ID, WA, Pullman/  
Moscow Rgnl, RNAV (GPS) RWY 6,  
Amdt 2

Pullman/Moscow, ID, WA, Pullman/  
Moscow Rgnl, RNAV (GPS) RWY 24,  
Amdt 1

Pullman/Moscow, ID, WA, Pullman/  
Moscow Rgnl, Takeoff Minimums and  
Obstacle DP, Amdt 4

Pullman/Moscow, ID, WA, Pullman/  
Moscow Rgnl, VOR RWY 6, Amdt 9

Clarksburg, WV, North Central West  
Virginia, ILS OR LOC RWY 21, Amdt  
3

Clarksburg, WV, North Central West  
Virginia, RNAV (GPS) RWY 3, Amdt  
1

Clarksburg, WV, North Central West  
Virginia, RNAV (GPS) RWY 21, Amdt  
1

Clarksburg, WV, North Central West  
Virginia, Takeoff Minimums and  
Obstacle DP, Amdt 6

Clarksburg, WV, North Central West  
Virginia, VOR-A, Amdt 1

Effective 18 October 2012

Fort Huachuca/Sierra Vista, AZ, Sierra  
Vista Muni/Libby AAF, RADAR 1,  
Amdt 5, CANCELED

[FR Doc. 2012-20863 Filed 8-27-12; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 30858; Amdt. No. 3493]

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

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective August 28, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 2012.

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

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For

information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

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

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

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

**FOR FURTHER INFORMATION CONTACT:**

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

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description

of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

**The Rule**

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

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

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

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a

“significant rule” under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR part 97**

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

Issued in Washington, DC, on August 17, 2012.

**Ray Towles,**

*Deputy Director, Flight Standards Service.*

**Adoption of the Amendment**

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

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

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

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

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

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

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

\* \* \* **EFFECTIVE UPON PUBLICATION**

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
20-Sep-12 .....	NJ	Teterboro .....	Teterboro .....	2/0190	8/9/12	ILS OR LOC RWY 6, Amdt 29E.
20-Sep-12 .....	NJ	Teterboro .....	Teterboro .....	2/0191	8/9/12	COPTER ILS OR LOC RWY 6, Amdt 1E.
20-Sep-12 .....	TX	Alice .....	Alice Intl .....	2/1083	8/9/12	VOR RWY 31, Amdt 13B.
20-Sep-12 .....	TX	Alice .....	Alice Intl .....	2/1085	8/9/12	LOC/DME RWY 31, Orig-B.
20-Sep-12 .....	AZ	Tucson .....	Tucson Intl .....	2/2051	8/9/12	RNAV (RNP) Y RWY 29R, Orig-A.
20-Sep-12 .....	AZ	Tucson .....	Tucson Intl .....	2/2052	8/9/12	RNAV (GPS) Z RWY 29R, Amdt 2A.

[FR Doc. 2012-20875 Filed 8-27-12; 8:45 am]

BILLING CODE 4910-13-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 3

RIN 3038-AC96

#### Registration of Intermediaries

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is adopting regulations to further implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding registration of intermediaries. Specifically, the Commission is adopting certain conforming amendments to the Commission's regulations regarding the registration of intermediaries, consistent with other Commission rulemakings issued pursuant to the Dodd-Frank Act, and other non-substantive, technical amendments to its regulations.

**DATES:** Effective October 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Andrew Chapin, Associate Director, Division of Swap Dealer and Intermediary Oversight, (202) 418-5465, [achapin@cftc.gov](mailto:achapin@cftc.gov); or Claire Noakes, Attorney Advisor, Division of Swap Dealer and Intermediary Oversight, (202) 418-5444, [cnoakes@cftc.gov](mailto:cnoakes@cftc.gov); Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Act.<sup>1</sup> Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (CEA)<sup>2</sup> to establish a comprehensive new regulatory framework 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

<sup>1</sup> See Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at: [http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173\\_enrolledbill.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf).

<sup>2</sup> 7 U.S.C. 1 et seq.

clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

As discussed below, the regulations the Commission is adopting today concern conforming and technical amendments to part 3 governing the registration of intermediaries. These final regulations are based in large part on the Commission's proposed regulations regarding part 3 (Proposal).<sup>3</sup> The conforming amendments largely consist of adding references, where appropriate, to SDs, MSPs and swap execution facilities (SEFs). In addition, the adopted regulations contain modernizing and technical amendments to part 3 in anticipation of an influx of new registrants. Further, the adopted regulations clarify or update definitions, outdated cross-references to other regulations, and other typographical errors.

## II. Comments<sup>4</sup> and Responses

### A. In General

In response to the Proposal, the Commission received four comments from the Futures Industry Association (FIA), the National Futures Association (NFA), and two individuals, Chris Barnard and Bill Nolan. In addition, the Commission also received comments relevant to the Proposal in a global comment letter submitted by a U.S. investor and a petition for exemption submitted pursuant to Section 4(c) of the CEA<sup>5</sup> by a group of trade industry associations.<sup>6</sup> The commenters generally supported the Commission's efforts to update and modernize part 3 consistent with the regulatory developments set forth in the Dodd-

<sup>3</sup> 76 FR 12888, Mar. 9, 2011.

<sup>4</sup> The comments the Commission received on the Proposal are currently available on the Commission's Web site.

<sup>5</sup> 7 U.S.C. 6(c).

<sup>6</sup> The Commission determined that the issues raised in the global comment letter with respect to addressing the types of activities that would cause a market participant to be deemed an introducing broker engaged in swap-related activities were outside of the scope of the Proposal, and therefore is not addressing them in this final rule. Likewise, the petition submitted by the trade industry associations cited the Proposal as an example of amendments that would likely not be effective in time for a July 16, 2011 compliance deadline. Those concerns were addressed when the Commission granted related relief and extended the effective and/or compliance date applicable to many Dodd-Frank requirements. See the second amended version of the effective date order at 77 FR 41260, July 13, 2012.

Frank Act. In consideration of the comments received,<sup>7</sup> and unless specifically addressed below in the section-by-section analysis, the Commission adopts the final regulations as proposed.

### B. Section 3.1—Definitions

Section 3.1 proposed alterations to the scope of persons who, by reason of their ownership of securities of a registrant, must be listed as a principal. The Commission proposed to narrow the current category of persons in § 3.1(a)(2)(i) to only those individuals who are the owners or are entitled to vote or have the power to sell or direct the sale of 10 percent or more of the outstanding shares of any class of equity securities, other than non-voting securities. The Commission intended to narrow the scope of the provision because the existing provision was over-inclusive, in that it captured individuals without the ability to influence a company's actions, such as owners of 10% of a class of preferred stock. However, upon further reflection, the Commission is concerned that the Proposal might, in other ways, be under-inclusive, in that it would fail to capture an owner who might indirectly have the power—such as through a membership agreement—to dictate upfront the entity's activities that are subject to regulation by the Commission. Consequently, in order to strike the right balance between the over-inclusive existing provision and the under-inclusive proposed language, the Commission is modifying § 3.1(a)(2)(i) to include individuals who have the power to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission.<sup>8</sup>

<sup>7</sup> NFA requested that the Commission specifically list the chief compliance officer of a registered foreign exchange dealer in the definition of principal. The Commission addressed this request in another rulemaking, wherein chief compliance officer is listed as an example of a principal of a registrant. See 77 FR 20200, Apr. 3, 2012.

<sup>8</sup> In comparison, broker-dealers regulated by the Securities and Exchange Commission are required to disclose on Form BD that is filed with the Financial Industry Regulatory Authority any person not otherwise named on Schedule A as a direct owner or Schedule B as an indirect owner who nonetheless controls the management or policies of the applicant through agreement or otherwise. See <http://www.sec.gov/about/forms/formbd.pdf>.

*C. Section 3.10—Registration of Futures Commission Merchants, Retail Foreign Exchange Dealers, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators, Swap Dealers, Major Swap Participants, and Leverage Transaction Merchants. Section 3.11—Registration of Floor Brokers and Floor Traders. Section 3.12—Registration of Associated Persons of Futures Commission Merchants, Retail Foreign Exchange Dealers, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants*

Section 3.10 generally sets forth the registration requirements for various Commission registrants. Section 3.11 generally sets forth the registration requirements for floor brokers and floor traders. Section 3.12 generally sets forth the registration requirements for natural persons associated with a Commission registrant in certain capacities, referred to as associated persons (APs).

With respect to APs, the Commission proposed to amend § 3.10 to add a new paragraph (c)(5) to clarify that a person employed by either an SD or a MSP and acting as its AP is not required to separately register as an SD or MSP, respectively, solely arising out of the person's activities as an AP. The Commission sought public comment as to whether this exemption is necessary to clarify the registration responsibilities of employees, in light of the current absence of a registration requirement as an AP of an SD or an MSP, and in light of the definition requiring persons who engage in certain swap activities to register as an SD or an MSP.<sup>9</sup> FIA and Chris Barnard were supportive of this clarification on the grounds that it provided regulatory certainty. The Commission is adopting the language in new paragraph (c)(5) with a change in the language to reflect that it is not appropriate to consider the AP's activities as an AP of an SD for the purpose of determining whether the person is an SD.

With respect to intermediaries, current § 3.10(c)(2) and (3) provides exemptions from registration as a futures commission merchant (FCM) for foreign brokers and other foreign intermediaries conducting activities in commodity interest transactions on designated contract markets (DCMs) solely on behalf of customers located outside the U.S. The Commission proposed to amend this section to expand these registration exemptions to foreign brokers and foreign

intermediaries engaged in commodity interest transactions solely on behalf of non-U.S. customers executed on a SEF and cleared on a designated clearing organization through the customer omnibus account maintained with a registered FCM. FIA supported the Commission's proposal to align registration exemptions for foreign intermediaries across DCMs and SEFs. The Commission also sought comment as to whether it should expand such exemption to swap transactions executed bilaterally, and FIA supported this suggestion as well. Finally, the Commission sought comment as to whether any expansion should distinguish between bilateral swap transactions that occur within the U.S. and those that occur abroad. The Commission did not receive any comments regarding such a distinction. Therefore, the Commission is amending § 3.10(c)(2) and (3) to extend the registration exemption to commodity interest transactions executed bilaterally, on or subject to the rules of a DCM, or on or subject to the rules of a SEF, that are submitted for clearing on an omnibus basis through a registered FCM.

As proposed, § 3.11 pertaining to registration of floor brokers and floor traders contained a series of technical changes, such as consolidating an exemption found in § 3.4 and removing references to DTEFs. Subsequently, the Commission has promulgated the further definition of the term "swap dealer"<sup>10</sup> which, among other things, excludes certain swaps entered into by registered floor traders from the SD determination. Specifically, § 1.3(ggg)(6)(iv) states that "[i]n determining whether a person is a swap dealer, each swap that the person enters into *in its capacity as a floor trader* as defined by section 1a(23) of the Act or on or subject to the rules of a swap execution facility shall not be considered for the purpose of determining whether the person is a swap dealer," provided that the person is registered as a floor trader pursuant to § 3.11 and otherwise satisfies other conditions with respect to its trading, including certain requirements as if it were an SD.<sup>11</sup>

Given that legal entities, in addition to natural persons, may seek to avail themselves of the exclusion set forth above, the Commission therefore is adding a reference to Form 7-R in

§ 3.11. Form 7-R, as the application for registration as an intermediary, is the appropriate form for NFA to process an entity's application for registration as a floor trader engaged in swaps activities. Additionally, references to SEFs are being added throughout § 3.11 as one of the two categories of facilities for which floor traders in swaps will be granted trading privileges. Although these additions were omitted in the Proposal, the Commission believes that insertion of the appropriate reference to the type of registration form, and the type of facility, that would allow the NFA to properly process applications for registration of floor traders engaged in swaps activities are conforming changes to the registration rule that are necessary to implement the SD definition.

Consequently, the Commission is adopting additional technical modifications in § 3.21 to address the processing of fingerprints for principals of a floor trader that is a non-natural person, as well as in § 3.33 to reflect the use of Form 7-W for a request for withdrawal from a floor trader that is a non-natural person. The Commission is also adopting other technical modifications in §§ 3.30 and 3.40 to reflect the registration of legal entities as floor traders,<sup>12</sup> and in §§ 3.2, 3.4, 3.42, 3.56, 3.60 and 3.64 to add references to SEFs.

The Commission proposed to amend § 3.12(h)(1) to provide that a person is not required to register as an AP in any capacity if such person is registered in one of the other enumerated categories, including an SD or MSP. FIA agreed with the Commission that it is highly improbable that an individual, rather than an entity, would register as an SD and MSP, but supported the Commission's proposal in light of the regulatory certainty that it provides. Accordingly, the Commission is adopting § 3.12(h)(1) as proposed.

#### *D. Section 3.31—Deficiencies, Inaccuracies, and Changes To Be Reported. Section 3.33—Withdrawal From Registration*

Section 3.31 sets forth procedural requirements for a registrant to update and/or correct information previously provided to the Commission and the NFA. The NFA is a registered futures association (RFA) to which the Commission has delegated certain registration functions.<sup>13</sup> Currently, NFA

<sup>12</sup> In § 3.40, the provision for temporary licenses is limited to individual floor traders because this provision is applicable only to natural persons (such as APs addressed in § 3.40(a)).

<sup>13</sup> Section 17(o)(1) of the CEA, 7 U.S.C. 21(o)(1), provides that the Commission may require an RFA

<sup>9</sup> See 77 FR 30596, May 23, 2012.

<sup>10</sup> 77 FR 30596, May 23, 2012.

<sup>11</sup> 17 CFR 1.3(ggg)(6)(iv) (emphasis added). Section 1a(23) of the CEA restricts floor traders to the offer and sale of contracts "solely for such person's own account." 7 U.S.C. 1a(23).

exercises discretion in determining whether changes to the information originally filed on the registrant's Form 7-R or 8-R,<sup>14</sup> including its legal name, form of organization, and list of principals, would require a registrant to withdraw and re-register or, in the alternative, amend its Form 7-R or 8-R. The NFA's discretion is subject only to the requirement to withdraw and re-register set forth in § 3.31(a)(1) where a registrant is reporting a change in the form of organization from or to a sole proprietorship, and the safe-harbor from re-registration set forth in § 3.31(a)(3).

Among other changes set forth in the Proposal, the Commission proposed: (1) To adopt § 3.31(a)(5) to require re-registration in the event of a change in name or form of organization and a change in principal, while preserving the existing safe harbor in § 3.31(a)(3) in the event that there is no change in principal and the registrant will be liable for its predecessor organization. The Commission specifically requested comment on whether the additional transparency under the new provisions of § 3.31 is beneficial and necessary to fulfill the Commission's mandate to protect customers, and whether the existing safe harbors from re-registration should be maintained. In response to the Commission's request, NFA and FIA opposed the proposed re-registration requirements as unnecessary, while Bill Nolan supported the proposed re-registration requirements as necessary to ensure that the existing process is not abused by registrants to the detriment of customers.

In particular, the NFA challenged the proposed amendments to § 3.31 on the following grounds: (1) It will be more difficult for members of the public to uncover a "new" firm's true disciplinary information; (2) the change in the legal name or form of a business organization and the addition of a principal does not necessarily trigger a regulatory need for re-registration; and (3) the proposed changes do not adequately address the timing of events sufficient to require re-registration. FIA similarly opposed the proposed changes on the grounds that re-registration should not be required for concurrent changes to the name or form of an organization, or the addition of a

to perform certain Commission registration functions, in accordance with the CEA and the rules of the RFA.

<sup>14</sup> Form 7-R is the Commission's application for registration as an intermediary or floor broker that is a non-natural person and application for NFA membership, while Form 8-R is the Commission's application for registration as an AP, floor broker, or individual floor trader, as well as the application for listing as a principal of a registrant.

principal because re-registration is not required separately for each of these occurrences. FIA also stated that, upon implementation of the Dodd-Frank Act, the prospective mergers of affiliated companies will be negatively impacted by the proposed requirements.

After carefully considering the foregoing comments, the Commission has determined not to adopt the amendment in § 3.31(a)(3) and (5) as proposed.<sup>15</sup> The Commission intends to promptly consider alternatives to the Proposal's re-registration requirements<sup>16</sup> in order to address customer protection issues raised by the current rules. In the meantime, a prospective customer will continue to be able to obtain disciplinary history of any associated organizations by reviewing the list of principals shared by both the currently and formerly registered organizations, which is already contained in a publicly available database maintained by the NFA.

In its comment letter, the NFA also suggested a few technical edits to the language in proposed § 3.31 to clarify that: (1) It is not the electronic update reporting a change on a Form 7-R that creates any deficiency or inaccuracy; and (2) an applicant or registrant no longer lists its principals who are individuals on its application for registration, as only holding companies are listed. The Commission believes that these comments improve upon the proposed language and is adopting these suggested changes in the final regulation. Finally, as previously mentioned, the Commission is also adopting additional technical modifications in § 3.31 to reflect the use of Form 7-R for floor traders that are non-natural persons.

#### E. Corrections

In the Proposal, the Commission noted that it would be necessary to

<sup>15</sup> In its comment letter, the NFA also suggested a few technical edits to the language in proposed § 3.31(a)(2) and (4) to reflect the current filing requirements associated with the filing of Form 7-R. The Commission agrees with these comments and is adopting these technical edits in the final rule. Additionally, as a technical change, the Commission is deleting § 3.31(b)(2) because it duplicates some of the language in § 3.31(a)(1) with respect to the obligations of applicants for registration as SDs or MSPs, and is combining the reference to principals of SDs or MSPs found in current § 3.31(b)(2) with the reference to principals of other registrants in current § 3.31(b)(1).

<sup>16</sup> In comparison, consider that broker-dealers regulated by the Securities and Exchange Commission are required to provide on Form BD, which is filed with the Financial Industry Regulatory Authority, any information about business predecessors, including the date of succession, name of predecessor, and the registration number for any predecessor.

harmonize any distinctions between the Proposal and other rulemakings as they become final. On January 19, 2012, the Commission published in the **Federal Register** a final rulemaking regarding the registration of SDs and MSPs.<sup>17</sup> In that final rulemaking, the Commission adopted new registration requirements for SDs and MSPs that were not contained in the rule language on which the Proposal was based. In order to integrate the new rule language from the above final rulemaking with the proposed language to be finalized in this release, the Commission is incorporating, where relevant, the amended rule language referencing SDs and MSPs into this release.<sup>18</sup>

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (Reg Flex Act) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.<sup>19</sup> A regulatory flexibility analysis or certification is required for "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to" the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b) or any other law.<sup>20</sup> The final rules promulgated today amend existing rules in part 3 regarding the registration of intermediaries consistent with other Commission rulemakings issued pursuant to the Dodd-Frank Act, and also make other technical, non-substantive amendments to part 3.

As set forth in the Proposal,<sup>21</sup> the final rules shall affect registered FCMs, IBs, commodity trading advisors, commodity pool operators, SDs, and MSPs. The Commission has previously determined that FCMs, commodity pool operators, SDs, and MSPs are not small entities for purposes of the Reg Flex Act.<sup>22</sup> The Commission has previously made a determination with respect to IBs and commodity trading advisors to evaluate within the context of a

<sup>17</sup> 77 FR 2613, Jan. 19, 2012. The Commission subsequently published a correction regarding certain language set forth in the January 19, 2012 release. See 77 FR 3590, Jan. 25, 2012.

<sup>18</sup> See, e.g., § 3.12.

<sup>19</sup> 5 U.S.C. 601 *et seq.*

<sup>20</sup> See 5 U.S.C. 601(2), 603, 604 and 605.

<sup>21</sup> The Commission did not receive any comments regarding the Reg Flex Act and the Proposal.

<sup>22</sup> See 47 FR 18618, 18619-20, Apr. 30, 1982 (FCMs and commodity pool operators); 77 FR 30596, 30701 (finding that MSPs are not small entities and that the number of SDs that are small entities, if any, is not significant).

particular rule proposal whether all or some IBs or commodity trading advisors should be considered to be small entities and, if so, to analyze the economic impact on them of any such rule.<sup>23</sup> The final rules will also affect floor traders. The Commission has not previously made a determination regarding floor traders, since currently all registered floor traders are individuals, and individuals are not included in the small entity analysis under the Reg Flex Act.

Since there could be some small entities that register as IBs, commodity trading advisors, or floor traders, the Commission considered whether this rulemaking would have a significant economic impact on these registrants. The final rules would clarify the mechanics of registration by updating cross-references, consolidating exemptions, and deleting obsolete forms. The Commission does not expect registrants to incur additional expenses as a result of these clarifications. Consequently, the Commission finds that there is no significant economic impact on IBs or commodity trading advisors resulting from this rulemaking. The final rules also provide clarity to floor traders regarding existing registration requirements (for example, the revisions to § 3.11 clarify that an entity that wishes to register as a floor trader shall do so by filing Form 7-R), rather than imposing any new registration requirement. Consequently, the Commission finds that there is no significant economic impact on floor traders resulting from this rulemaking.

Accordingly, for the reasons stated in the Proposal and the additional rationale provided above, the Commission believes that the conforming and other technical amendments in this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the regulations being published today by this **Federal Register** release will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (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.<sup>24</sup> In the

Proposal, the Commission indicated that the proposed rules would not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the PRA. The Commission invited public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements would result from the rules proposed herein. In response, the Commission received no comments.

The currently approved rule collection covering the regulatory filings discussed in this final rule (3038-0023, which covers Forms 3-R, 7-R, 8-R and 8-T) has a burden of 78,109 respondents and 7,030 annual hours.<sup>25</sup> The Commission believes that the number of entities filing Form 7-R will increase slightly, since that form may now be used by an entity to register as a floor trader, and the number of persons filing Form 8-R and 8-T will also increase slightly, when individuals who are principals of entities that are registered as floor traders use those forms to list themselves.

Therefore, the Commission has determined to revise the burden for this information collection as follows. The burden associated with the use of Form 7-R for the registration of entities as floor traders is estimated to be 60 hours, assuming 60 respondents,<sup>26</sup> which will result from: (1) Application for registration by entities as floor traders and submission of required information on behalf of their respective principals; (2) initially, no withdrawals from registration by floor traders and a relatively small decrease in the number of their respective principals; and (3) initially, no reported corrections. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency.

The respondent burden for this collection is estimated to average 1 hour per response for the Form 7-R; 0.8 hours per response for the Form 8-R; and 0.2 hours per response for the Form 8-T.<sup>27</sup> These estimates include the time needed to review instructions; to

prepare technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; and to transmit or otherwise disclose the information.

#### Form 7-R

*Respondents/Affected Entities:* 60.  
*Estimated number of responses:* 60.  
*Estimated total annual burden on respondents:* 1 hour.  
*Frequency of collection:* On occasion and annually.  
*Burden Statement:* 60 respondents × 1 hour = 60 Burden Hours.

#### Form 8-R

*Respondents/Affected Entities:* 5 principals per each of 60 floor traders.  
*Estimated number of responses:* 300.  
*Estimated total annual burden on respondents:* 0.8 hours.  
*Frequency of collection:* On occasion.  
*Burden Statement:* 300 respondents × 0.8 hours = 240 Burden Hours.

#### Form 8-T

*Respondents/Affected Entities:* 1 principal per each of 10 floor traders.  
*Estimated number of responses:* 10.  
*Estimated total annual burden on respondents:* 0.2 hours.  
*Frequency of collection:* On occasion.  
*Burden Statement:* 10 respondents × 0.2 hours = 2 Burden Hours.

#### C. Cost-Benefit Considerations

Section 15(a) of the CEA<sup>28</sup> requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing an order. 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 discretionary determinations with respect to the Section 15(a) factors.

The regulations being adopted today conform, modernize, and make technical amendments to part 3 governing the regulation of intermediaries. Their purpose is to

<sup>23</sup> See, with respect to commodity trading advisors, 47 FR 18620, Apr. 30, 1982, and see, with respect to IBs, 48 FR 35276, Aug. 3, 1983.

<sup>24</sup> 44 U.S.C. 3501 *et seq.*

<sup>25</sup> See currently approved information collection, available at [http://www.reginfo.gov/public/do/PRAICList?ref\\_nbr=201203-3038-004](http://www.reginfo.gov/public/do/PRAICList?ref_nbr=201203-3038-004).

<sup>26</sup> The Commission has previously estimated that approximately 120 entities will register as SDs. See 77 FR 2613, 2622 (January 19, 2012). The Commission believes it is reasonable to estimate that half as many entities will register as floor traders.

<sup>27</sup> See *id.* at 2643.

<sup>28</sup> 7 U.S.C. 19(a).

ensure that the Commission's current rules are consistent with other Commission rulemakings issued pursuant to the Dodd-Frank Act. Before adopting these regulations, the Commission sought public comment on the Proposal, including comment on the costs and benefits of the Proposal. While inviting public comments on its cost-benefit considerations, the Proposal clarified that the substantive proposed rulemakings with which this rulemaking is associated have addressed the costs and benefits of the proposals as required by section 15(a) of the CEA.<sup>29</sup>

The Commission received few specific comments concerning the Proposal's consideration of costs and benefits beyond general comments that the costs associated with particular rule amendments would outweigh the benefits. Those it did receive are addressed in the discussion below. None of the comments received provided a basis to quantify estimated costs or benefits.

The Commission's baseline for consideration of the costs and benefits of this rulemaking are the costs and benefits that the public and market participants would experience in the absence of this proposed regulatory action. In other words, the proposed baseline is an alternative situation in which the Commission takes no action to conform, modernize, and make technical adjustments to its existing rules as described above in light of the Dodd-Frank Act amendments to the CEA.

#### 1. Costs and Benefits of the Conforming Amendments—In General

As set forth in the Proposal, the regulations the Commission is adopting concern conforming and technical amendments to part 3 governing the registration of intermediaries. Although the conforming amendments do not involve substantive changes to existing regulations, and hence no significant changes to the costs or benefits of the same, the final rules do benefit market participants by adding specificity to the mechanics of registration, which also benefits customers in the form of increased transparency. For example, the conforming amendments will add references to SEFs in § 3.42 to clarify that a temporary license would immediately terminate upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a SEF.

#### 2. Costs and Benefits of the Definitions

Current § 3.1(a) sets forth the definition of "principal," and § 3.1(a)(3) carves out from that definition certain persons that have made capital contributions in the form of subordinated debt to a registrant, including unaffiliated banks operating in the U.S. and U.S. branches of foreign banks. The Commission is adopting amendments to expand the carve-out to accommodate the likelihood that persons with capital contributions from foreign banks might register as SDs and thus be included within the definition of principal. This expanded definitional carve-out makes the foreign bank registration process consistent with that for domestic banks. This consistency promotes market efficiency by avoiding additional costs that foreign banks would otherwise incur to comply with listing and qualification requirements.

No comments were received with respect to any cost or benefit implications of this definitional amendment, notwithstanding that the Commission specifically sought comments concerning it.<sup>30</sup>

#### 3. Costs and Benefits of Section 3.10—Registration of Futures Commission Merchants, Retail Foreign Exchange Dealers, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators, Swap Dealers, Major Swap Participants, and Leverage Transaction Merchants. Section 3.11—Registration of Floor Brokers and Floor Traders. Section 3.12—Registration of Associated Persons of Futures Commission Merchants, Retail Foreign Exchange Dealers, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants

Section 3.10 generally sets forth the registration requirements for various Commission registrants. The Commission has decided to implement the expansion of the existing exemption in § 3.10(c)(2) and (3), which will introduce parity between registration obligations of foreign brokers and foreign intermediaries conducting commodity interest transactions bilaterally, on DCMs, and on SEFs. The Commission expects such expansion of the exemption to reduce compliance costs without affecting customer

<sup>30</sup> The Commission requested comments on whether the provision is warranted to ensure uniform listing of principals by domestic and foreign-domiciled registrants, and whether the expansion would ensure that the list of principals remains a meaningful reflection of the persons who actually exercise control over the registrant's regulated activities.

protection. The Commission has also decided to implement the proposed new paragraph § 3.10(c)(5), which will provide regulatory certainty that the activities engaged in solely as an associated person of an SD would not require such person to register as an SD. The Commission believes that this amendment is beneficial by reducing the costs to market participants of approaching the Commission for clarifications.

Section 3.11 is being amended to reflect the further definition of the term "swap dealer" which, among, other things, excludes certain swaps entered into by registered floor traders from the SD determination. Traditionally, natural persons have registered as floor traders. However, following promulgation of rules further defining the term "swap dealer," the Commission foresees that firms will register as floor traders, making the previous rule requiring fingerprinting for all floor traders impractical without clarification. The new rules clarify that principals of a firm registering as a floor trader, and each individual responsible for entry of orders from that floor trader's own account, will be subject to the fingerprinting requirement. The Commission believes that this amendment is beneficial by obviating the need for potentially impacted market participants to incur costs to approach the Commission for clarifications. The other amendments extending the scope of § 3.11 to SEFs, while mainly technical in nature, will improve operational efficiency by allowing NFA to properly process applications for registration for floor traders engaged in swap activities.

Section 3.12 generally sets forth the registration requirement for APs. The Commission is adopting an amendment to § 3.12(h)(1)(i) to provide that a person is not required to register as an AP in any capacity if he or she is registered in one of the other enumerated categories, including an SD or MSP. FIA agreed with the Commission that it is highly improbable that an individual, rather than an entity, would register as an SD and MSP, but supported the Commission's proposal in light of the clarity it provides. As the change clarifies and extends the exemptions to activities of an SD or MSP, it will not create additional costs, and will benefit the markets by promoting efficiency by eliminating the need for multiple registrations by a single individual.

#### 4. Costs and benefits—DTEF

The rules amendments adopted today delete the term DTEF from §§ 3.2(c), 3.2(c)(2), 3.10(a)(3)(i)(A), 3.10(c)(2)(i),

<sup>29</sup> 76 FR at 12891.

3.10(c)(3)(i), 3.10(c)(4)(ii) and (iv), 3.11(a)(2) and (3), 3.11(b), 3.31(d), 3.40(a)(2)(iv), 3.42(a)(6), and 3.46(a)(8). This will implement the abolishment of DTEF as a market category by the Dodd-Frank Act.

As this change is mandated by statute, it will not create costs and benefits relative to the baseline. No comments were received on the costs and benefits of this aspect of the Proposal.

#### 5. Cost and Benefits of Modernization and Technical Amendments to Part 3—Definitions

Section 3.1(a)(2) defines a principal to include persons who exceed a threshold for equity ownership. As a technical matter, the Commission is adopting amendments to harmonize the references to outstanding classes of securities in § 3.1(a)(2)(i) and (ii) by referring throughout to “outstanding shares of any class of equity securities, other than non-voting securities.” The primary benefit from these amended regulations is that they provide specificity for calculations involving authorized but unissued securities, or debt securities.

Also, the Commission is amending its regulations to move the concept of indirect owners found in the definition of beneficial ownership in § 3.1(d) to § 3.1(a)(4) to serve as a backstop to the requirement to list indirect owners in § 3.1(a)(2). The Commission received no comments with respect to the costs and benefits of this amendment. The Commission does not believe that this amendment will have a material impact on costs and benefits relative to the baseline.

The rules incorporate revised language further defining the definition of principal to include any person who has the power to exercise a controlling influence over an entity’s activities that are subject to regulation by the Commission. As described earlier, the proposed amendments were designed to reduce the scope of persons who might potentially be covered by the definition. Under certain circumstances, the revised § 3.1(a)(2)(i) language referencing those with power to exercise a controlling influence could potentially increase the scope of persons covered by the definition. But, given that this amendment is similar to an existing requirement in Form BD covering broker-dealers, the Commission believes that any additional costs will be limited to the subset of firms that are not already registered with the SEC and within this subset, those firms which have individuals who are not subject to the existing equity ownership threshold, or the existing director or officer

function threshold, but nonetheless who possess the power to exercise control. Given the nature of the control structure being addressed, while it is not feasible for the Commission to estimate the number of firms likely to be impacted by this rule, it believes that costs of complying with the rule are likely to be minimal because information on which owners of an entity exercise control is generally known to officers of that entity. Furthermore, the minimal costs are justified by the benefits to the market and market participants from ensuring that individuals cannot circumvent the fitness qualifications presently in place for principals by structuring their holdings into non-voting securities, and then exercising control through a separate agreement.

#### 6. Costs and Benefits of Section 3.31—Deficiencies, Inaccuracies, and Changes To Be Reported, and Section 3.33—Withdrawal From Registration

Current § 3.31 sets forth procedural requirements for a registrant to update and/or correct information previously provided to the Commission and the NFA. Section 3.33 addresses the procedural requirements for the withdrawal of registration. The Commission is adopting amendments to § 3.31(a) to reference the requirement in amended § 3.33 to withdraw registration upon certain events of dissolution, and in § 3.31(b), (c) and (d) to make technical corrections.

The adopted amendments in § 3.31 are technical and are not expected to involve costs, but will provide greater clarity by correcting references to outdated forms and by deleting duplicate instructions. The amendments to § 3.33 clarify the requirement to withdraw under certain circumstances involving dissolution of a company, and would improve the predictability of withdrawal requirements to the benefit of market participants. There were no comments on the costs and benefits of the proposed withdrawal requirements under § 3.33.

#### 7. Costs and Benefits of Registration Forms

The Commission is adopting amendments to the regulations addressing the forms used during the registration process. These changes are technical in nature—for example, the changes would delete references to an obsolete form and obsolete cross-references. The Commission does not believe that increased costs to market participants or the public will result from these changes. That said, the Commission believes they do provide a benefit by addressing gaps in the current

information collected through the various forms, particularly those forms cross-referencing other data.

There were no comments on the costs and benefits of the proposed technical amendments to the forms.

#### 8. Section 15(a) Factors

##### • *Protection of market participants and the public.*

The Commission believes that the amendments to § 3.33 will improve the protection of market participants and the public by requiring withdrawal of registration in the event of dissolution of a registrant, thus improving the protection of the public.

##### • *Efficiency, competitiveness, and financial integrity.*

The amendments to § 3.1 clarify the calculations used to determine who meets the definition of principal, reducing uncertainty surrounding compliance by intermediaries. The amendments to the regulations addressing the forms used during the registration process will update the description of information collection and make it more accurate, which improves the overall efficiency of our markets.

• *Price discovery.* The Commission has not identified any impact to the price discovery process from these rules.

• *Sound risk management policies.* The Commission has not identified any impact to sound risk management practices from these rules.

• *Other public interest considerations.* The Commission has not identified any impact to other public interest considerations from these rules.

#### List of Subjects in 17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

For the reasons stated in the preamble, the Commission amends 17 CFR part 3 as follows:

#### PART 3—REGISTRATION

■ 1. The authority citation for part 3 is revised to read as follows:

**Authority:** 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

■ 2. Amend § 3.1 by revising paragraphs (a) introductory text, (a)(2), and (a)(3), adding paragraph (a)(4), and removing and reserving paragraphs (d) and (e). The revisions and addition read as follows:

§ 3.1 Definitions.

(a) Principal. Principal means, with respect to an entity that is an applicant for registration, a registrant or a person required to be registered under the Act or the regulations in this part:

\* \* \* \* \*

(2)(i) Any individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise, is either the owner of ten percent or more of the outstanding shares of any class of equity securities, other than non-voting securities, is entitled to vote or has the power to sell or direct the sale of ten percent or more of the outstanding shares of any class of equity securities, other than non-voting securities, is entitled to receive ten percent or more of the profits of the entity, or has the power to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission; or

(ii) Any person other than an individual that is the direct owner of ten percent or more of the outstanding shares of any class of equity securities, other than non-voting securities; or

(3) Any person that has contributed ten percent or more of the capital of the entity, provided, however, that if such capital contribution consists of subordinated debt contributed by either:

(i) An unaffiliated bank insured by the Federal Deposit Insurance Corporation,

(ii) An unaffiliated "foreign bank," as defined in 12 CFR 211.21(n) that currently operates an "office of a foreign bank," as defined in 12 CFR 211.21(t), which is licensed under 12 CFR 211.24(a),

(iii) Such unaffiliated office of a foreign bank that is licensed, or

(iv) An insurance company subject to regulation by any State, such bank, foreign bank, office of a foreign bank, or insurance company will not be deemed to be a principal for purposes of this section, provided such debt is not guaranteed by another party not listed as a principal.

(4) Any individual who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of direct or indirect ownership of an equity security of the entity, other than a non-voting security, or preventing the vesting of such ownership, or of avoiding making a contribution of ten percent or more of the capital of the entity, as part of a plan or scheme to evade being deemed a principal of the entity, shall be deemed to be a principal of the entity.

\* \* \* \* \*

■ 3. Amend § 3.2 by revising the section heading and paragraphs (c) introductory text and (c)(2) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.

\* \* \* \* \*

(c) The National Futures Association shall notify the registrant, or the sponsor in the case of an applicant for registration as an associated person, and each designated contract market and swap execution facility that has granted the applicant trading privileges in the case of an applicant for registration as a floor broker or floor trader, if registration has been granted under the Act.

\* \* \* \* \*

(2) If an applicant for registration as a floor broker or floor trader receives a temporary license in accordance with § 3.40, the National Futures Association shall notify the designated contract market or swap execution facility that has granted the applicant trading privileges that only a temporary license has been granted.

\* \* \* \* \*

■ 4. Amend § 3.4 by revising paragraph (a) to read as follows:

§ 3.4 Registration in one capacity not included in registration in any other capacity.

(a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, floor broker, floor trader of any commodity for future delivery, commodity trading advisor, commodity pool operator, introducing broker, leverage transaction merchant, and associated person (other than an associated person of a swap dealer or major swap participant) must register as such under the Act. Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, registration in one capacity under the Act shall not include registration in any other capacity.

\* \* \* \* \*

■ 5. Amend § 3.10 by revising paragraphs (a)(3)(i)(A), (c)(2)(i), (c)(3)(i), (c)(4)(ii), (c)(4)(iii), and (c)(4)(iv) and adding paragraph (c)(5) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators, swap dealers, major swap participants, and leverage transaction merchants.

(a) \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) The broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market, to security futures products as defined in section 1a(44) of the Act;

\* \* \* \* \*

(c) \* \* \*

(2)(i) A foreign broker, as defined in § 1.3(xx) of this chapter, is not required to register as a futures commission merchant if it submits any commodity interest transactions executed bilaterally, on or subject to the rules of a designated contract market, or on or subject to the rules of a swap execution facility, for clearing on an omnibus basis through a futures commission merchant registered in accordance with section 4d of the Act.

\* \* \* \* \*

(3)(i) A person located outside the United States, its territories or possessions engaged in the activity of: An introducing broker, as defined in § 1.3(mm) of this chapter; a commodity trading advisor, as defined in § 1.3(bb) of this chapter; or a commodity pool operator, as defined in § 1.3(nn) of this chapter, in connection with any commodity interest transaction executed bilaterally or made on or subject to the rules of any designated contract market or swap execution facility only on behalf of persons located outside the United States, its territories or possessions, is not required to register in such capacity provided that any such commodity interest transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

\* \* \* \* \*

(4) \* \* \*

(ii) Such a person introduces, on a fully-disclosed basis in accordance with § 1.57 of this chapter, any institutional customer, as defined in § 1.3(g) of this chapter, to a registered futures commission merchant for the purpose of trading on a designated contract market;

(iii) Such person's affiliated futures commission merchant has filed with the National Futures Association (Attn: Vice President, Compliance) an acknowledgement that the affiliated futures commission merchant will be jointly and severally liable for any violations of the Act or the Commission's regulations committed by such person in connection with those introducing activities, whether or not

the affiliated futures commission merchant submits for clearing any trades resulting from those introducing activities; and

(iv) Such person does not solicit any person located in the United States, its territories or possessions for trading on a designated contract market, nor does such person handle the customer funds of any person located in the United States, its territories or possessions for the purpose of trading on any designated contract market.

\* \* \* \* \*

(5) In determining whether a person is a swap dealer, the activities of a registered swap dealer with respect to which such person is an associated person shall not be considered.

\* \* \* \* \*

■ 6. Revise § 3.11 to read as follows:

**§ 3.11 Registration of floor brokers and floor traders.**

(a) *Application for registration.* (1) Application for registration as a floor broker or floor trader must be on Form 8-R, if as an individual, or Form 7-R, if as a non-natural person, and must be completed and filed with the National Futures Association in accordance with the instructions thereto. Each Form 7-R filed in accordance with this paragraph (a) must be accompanied by a Form 8-R, completed in accordance with the instructions thereto and executed by each individual who is a principal of the applicant, and each individual responsible for entry of orders from that applicant's own account. Each Form 8-R filed in accordance with this paragraph (a) must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association, except that a fingerprint card need not be filed by any applicant who has a current Form 8-R on file with the Commission or the National Futures Association.

(2) An applicant for registration as a floor broker or floor trader will not be registered or issued a temporary license as a floor broker or floor trader unless the applicant has been granted trading privileges by a board of trade designated as a contract market or registered as a swap execution facility by the Commission.

(3) When the Commission or the National Futures Association determines that an applicant for registration as a floor broker or floor trader is not disqualified from such registration or temporary license, the National Futures Association will notify the applicant and any contract market or swap execution facility that has granted

the applicant trading privileges that the applicant's registration or temporary license as a floor broker or floor trader is granted.

(b) *Duration of registration.* A person registered as a floor broker or floor trader in accordance with paragraph (a) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets and swap execution facilities have ceased: provided, that if a floor broker or floor trader whose trading privileges on all contract markets and swap execution facilities have ceased for reasons unrelated to any Commission action or any contract market or swap execution facility disciplinary proceeding and whose registration is not revoked, suspended or withdrawn is granted trading privileges as a floor broker or floor trader, respectively, by any contract market or swap execution facility where such person held such privileges within the preceding sixty days, such registration as a floor broker or floor trader, respectively, shall be deemed to continue and no new Form 7-R, Form 8-R or Form 3-R record of a change to Form 7-R or Form 8-R need be filed solely on the basis of the resumption of trading privileges. A floor broker or floor trader is prohibited from engaging in activities requiring registration under the Act or from representing such person to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration or of all such trading privileges. Each contract market and swap execution facility that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader, must provide notice in accordance with § 3.31(d) after such person's trading privileges on such contract market or swap execution facility have ceased.

(c) *Exceptions.* A registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

■ 7. Amend § 3.12 by revising paragraphs (b), (c) introductory text, (g), (h)(1) introductory text, and (h)(1)(i) and (ii) to read as follows:

**§ 3.12 Registration of associated persons of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.**

\* \* \* \* \*

(b) *Duration of registration.* A person registered in accordance with paragraphs (c), (d), (f), or (i) of this section and whose registration has not been revoked will continue to be so registered until the revocation or withdrawal of the registration of each of the registrant's sponsors, or until the cessation of the association of the registrant with each of the registrant's sponsors. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself or herself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of his or her registration, or his or her sponsor's registration. Each of the registrant's sponsors must file a notice in accordance with § 3.31(c) reporting the termination of the association of the associated person.

(c) *Application for registration.* Except as otherwise provided in paragraphs (d), (f), and (i) of this section, application for registration as an associated person in any capacity must be on Form 8-R, completed and filed in accordance with the instructions thereto.

\* \* \* \* \*

(g) *Petitions for exemption.* Any person adversely affected by the operation of this section may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that an applicant should be exempted from the requirements of this section and why such an exemption would not be contrary to the public interest and the purposes of the provision from which exemption is sought. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(h) *Exemption from registration.* (1) A person is not required to register as an associated person in any capacity if that person is:

(i) Registered under the Act as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, floor broker, or as an introducing broker;

(ii) Engaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration

with the Financial Industry Regulatory Authority as a registered representative, registered principal, limited representative or limited principal, and that person does not engage in any other activity subject to regulation by the Commission;

\* \* \* \* \*

- 8. Amend § 3.21 by:
  - a. Revising paragraphs (a)(1) and (2);
  - b. Adding paragraph (a)(3); and
  - c. Revising paragraphs (b)(1) through (3), (c) introductory text, and (c)(4)(i) and (iii).

The revisions and addition read as follows:

**§ 3.21 Exemption from fingerprinting requirement in certain cases.**

(a) \* \* \*

(1) A legible, accurate and complete photocopy of a fingerprint card that has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and of each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days prior to the filing with the National Futures Association of the photocopy;

(2) A statement that such person's application for initial registration in any capacity was granted within the preceding ninety days, provided that the provisions of this paragraph (a)(2) shall not be applicable to any person who, by Commission rule, regulation, or order, was not required to file a fingerprint card in connection with such application for initial registration; or

(3) A statement that such person has a current Form 8-R on file with the Commission or the National Futures Association.

(b) \* \* \*

(1) With respect to the fingerprints of an associated person: An officer, if the sponsor is a corporation; a general partner, if a partnership; or the sole proprietor, if a sole proprietorship;

(2) With respect to fingerprints of a floor broker or individual floor trader: The applicant for registration; and with respect to fingerprints of each individual who is responsible for entry of orders from the account of a floor trader that is a non-natural person, the applicant for registration, or

(3) With respect to the fingerprints of a principal: An officer, if the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, floor trader that is a

non-natural person, or leverage transaction merchant with which the principal will be affiliated is a corporation; a general partner, if a partnership; or the sole proprietor, if a sole proprietorship.

(c) *Outside directors.* Any futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, floor trader that is a non-natural person, or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of § 3.10(a)(2), file a "Notice Pursuant to Rule 3.21(c)" with the National Futures Association. Such notice shall state, if true, that such outside director:

\* \* \* \* \*

(4) \* \* \*

(i) The name of the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity trading advisor, commodity pool operator, floor trader that is a non-natural person, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is an outside director;

\* \* \* \* \*

(iii) The internal controls used to ensure that the outside director for whom exemption under this paragraph (c) is sought does not have access to the keeping, handling or processing of the items described in paragraphs (c)(2)(i) and (ii) of this section; and

\* \* \* \* \*

- 9. Amend § 3.22 by revising paragraph (b) to read as follows:

**§ 3.22 Supplemental filings.**

\* \* \* \* \*

(b) That the person, or any individual who, based upon his or her relationship with that person is required to file a Form 8-R in accordance with the requirements of this part, as applicable, must, within such period of time as the Commission or the National Futures Association may specify, complete and file with the Commission or the National Futures Association a current Form 7-R, or if appropriate, a Form 8-R, in accordance with the instructions thereto.

\* \* \* \* \*

- 10. Revise § 3.30 to read as follows:

**§ 3.30 Current address for purpose of delivery of communications from the Commission or the National Futures Association.**

(a) The address of each registrant, applicant for registration, and principal, as submitted on the application for registration (Form 7-R or Form 8-R) or as submitted on the biographical supplement (Form 8-R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: Provided that the Commission or the National Futures Association may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, floor trader that is a non-natural person, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to an associated person to the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, floor trader that is a non-natural person, or leverage transaction merchant with which the associated person or the applicant for registration is or will be associated as an associated person.

(b) Each registrant, while registered and for two years after termination of registration, and each principal, while affiliated and for two years after termination of affiliation, must notify in writing the National Futures Association of any change of the address on the application for registration, biographical supplement, or other address filed with the National Futures Association for the purpose of receiving communications from the Commission or the National Futures Association. Failure to file a required response to any communication sent to the latest such address filed with the National Futures Association that is caused by a failure to notify in writing the National Futures Association of an address change may result in an order of default and award of claimed monetary damages or other appropriate order in any National Futures Association or Commission

proceeding, including a reparation proceeding brought under part 12 of this chapter.

■ 11. Amend § 3.31 by revising paragraphs (a), (b), (c)(1) introductory text, (c)(2), and (d) to read as follows:

**§ 3.31 Deficiencies, inaccuracies, and changes to be reported.**

(a)(1) Each applicant or registrant as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, floor trader that is a non-natural person or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7-R or Form 8-R that no longer renders accurate and current the information contained therein, with the exception of any change that requires withdrawal from registration under § 3.33. Each such correction shall be prepared and filed in accordance with the instructions thereto to create a Form 3-R record of such change.

(2) Where a registrant has changed its form of organization to or from a sole proprietorship, the registrant must request withdrawal from registration in accordance with § 3.33.

(3) Where any person becomes a principal of an applicant or registrant subsequent to the filing of the applicant's or registrant's current Form 7-R:

(i) If the new principal is not a natural person, the registrant shall update such Form 7-R to create a Form 3-R record of change.

(ii) If the new principal is a natural person, the registrant shall file a Form 8-R, completed in accordance with the instructions thereto and executed by such person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto.

(b) Each applicant or registrant as a floor broker, floor trader or associated person, and each principal of a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, floor trader that is a non-natural person, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8-R or supplemental statement thereto to create a Form 3-R record of change.

(c)(1) After the filing of a Form 8-R or updating a Form 8-R to create a Form 3-R record of change by or on behalf of

any person for the purpose of permitting that person to be an associated person of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

(2) Each person registered as, or applying for registration as, a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, floor trader that is a non-natural person, or leverage transaction merchant must, within thirty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

(d) Each contract market or swap execution facility that has granted trading privileges to a person who is registered, has received a temporary license, or has applied for registration as a floor broker or floor trader, must notify the National Futures Association within sixty days after such person has ceased having trading privileges on such contract market or swap execution facility.

■ 12. Amend § 3.33 by revising paragraphs (a) introductory text, (b) introductory text, and (e) to read as follows:

**§ 3.33 Withdrawal from registration.**

(a) A futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity trading advisor, commodity pool operator, floor trader that is a non-natural person, or leverage transaction merchant must request that its registration be withdrawn prior to any voluntary resolution to file articles (or a certificate) of dissolution (or cancellation), and upon notice of any involuntary dissolution initiated by a third-party. A futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity trading advisor, commodity

pool operator, leverage transaction merchant, floor broker or floor trader may request that its registration be withdrawn in accordance with the requirements of this section if:

\* \* \* \* \*

(b) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity trading advisor, commodity pool operator, floor trader that is a non-natural person, or leverage transaction merchant must be made on Form 7-W, and a request for withdrawal from registration as a floor broker or individual floor trader must be made on Form 8-W, completed and filed with the National Futures Association in accordance with the instructions thereto. The request for withdrawal must be made by a person duly authorized by the registrant and must specify:

\* \* \* \* \*

(e) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, floor trader that is a non-natural person, or leverage transaction merchant on Form 7-W, and a request for withdrawal from registration as a floor broker or individual floor trader on Form 8-W, must be filed with the National Futures Association and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Swap Dealer and Intermediary Oversight, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. In addition, any floor broker or individual floor trader requesting withdrawal from registration must file a copy of his or her Form 8-W with each contract market or swap execution facility that has granted him or her trading privileges, and any floor trader that is a non-natural person requesting withdrawal from registration must file a copy of its Form 7-W with each contract market or swap execution facility that has granted it trading privileges. Within three business days of any determination by the National Futures Association under § 3.10(d) to treat the failure by a registrant to file an annual Form 7-R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

\* \* \* \* \*

■ 13. Amend § 3.40 by revising paragraph (a)(2) introductory text and (a)(2)(iv) to read as follows:

**§ 3.40 Temporary licensing of applicants for associated person, floor broker or floor trader registration.**

(a) \* \* \*

(2) The National Futures Association may grant a temporary license to any applicant for registration as a floor broker or individual floor trader upon the contemporaneous filing with the National Futures Association of:

\* \* \* \* \*

(iv) Evidence that the applicant has been granted trading privileges by a contract market or swap execution facility that has filed with the National Futures Association a certification signed by its chief operating officer with respect to the review of an applicant's employment, credit and other history in connection with the granting of trading privileges.

\* \* \* \* \*

■ 14. Amend § 3.42 by revising paragraphs (a) introductory text, (a)(2), (a)(6), and (a)(8) to read as follows:

**§ 3.42 Termination.**

(a) A temporary license issued pursuant to § 3.40 shall terminate:

\* \* \* \* \*

(2) Immediately upon termination of the association of the applicant for registration as an associated person with the registrant which filed the sponsorship certification, or immediately upon loss of trading privileges by an applicant for registration as a floor broker or floor trader on all contract markets and swap execution facilities which filed the certification described in § 3.40;

\* \* \* \* \*

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a designated contract market, swap execution facility or registered futures association within the time specified in section 10(g) of the National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum.

\* \* \* \* \*

(8) Immediately upon notice to the applicant and the applicant's sponsor or the contract market or swap execution facility that has granted the applicant trading privileges that:

(i) The applicant failed to disclose relevant disciplinary history information on the applicant's Form 8-R; or

(ii) An event has occurred leading to a required disclosure on the applicant's Form 8-R.

\* \* \* \* \*

■ 15. Amend § 3.44 by revising paragraph (a)(5) to read as follows:

**§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.**

(a) \* \* \*

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose.

\* \* \* \* \*

■ 16. Amend § 3.46 by revising paragraphs (a) introductory text, (a)(6), (a)(8), and (a)(10) to read as follows:

**§ 3.46 Termination.**

(a) A temporary license issued pursuant to § 3.44 shall terminate:

\* \* \* \* \*

(6) Immediately upon failure to comply with an order to pay a civil monetary penalty, restitution, or disgorgement within the time permitted under section 6(e), 6b, or 6c(d) of the Act;

\* \* \* \* \*

(8) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a designated contract market, swap execution facility, or registered futures association within the time specified in section 10(g) of the National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market, swap execution facility, or other appropriate arbitration forum.

\* \* \* \* \*

(10) Immediately upon notice to the applicant and the guarantor futures commission merchant that:

(i) The applicant or any principal (including any branch officer manager) failed to disclose relevant disciplinary history information on the applicant's Form 7-R or on a principal's Form 8-R; or

(ii) An event has occurred leading to a required disclosure on the applicant's Form 7-R or on a principal's Form 8-R.

\* \* \* \* \*

■ 17. Amend § 3.56 by revising paragraph (b)(1)(iv) to read as follows:

**§ 3.56 Suspension or modification of registration pursuant to section 8a(11) of the Act.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) The statement accompanying the notice referred to in paragraph (a)(2) of this section and, in an effort to have his registration modified rather than suspended, the Supplemental Sponsor Certification Statement signed by a sponsor, supervising floor broker or, in the case of a floor trader, a supervising registrant, principal, contract market, or swap execution facility, as appropriate for the registrant in accordance with § 3.60(b)(2)(i) and who meets the standards set forth in § 3.60(b)(2)(i)(A) and (C).

\* \* \* \* \*

■ 18. Amend § 3.60 by revising paragraphs (b)(2)(i) introductory text, (f)(3), and (l) to read as follows:

**§ 3.60 Procedure to deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.**

\* \* \* \* \*

(b) \* \* \*

(2)(i) In the response, if the person is not an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, the applicant or registrant shall also state whether he or she intends to show that registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the person is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, the applicant or registrant shall also state whether he or she intends to show that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the person is an associated person or an applicant for registration as an associated person and intends to make such a showing, he or she must also submit a letter signed by an officer or general partner authorized to bind the sponsor whereby the sponsor agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant as a result of a statutory disqualification proceeding under this section; if the person is a floor broker or a floor trader or an applicant for registration in either capacity and intends to make such a showing, he or she must, in the case of a floor broker or applicant for registration as a floor broker, also submit a letter signed by his employer or if he or she has no employer by another floor broker or, in the case of a floor trader or applicant for registration

as a floor trader, also submit a letter signed by an officer of the floor trader's clearing member, if such officer is a registrant or a principal of a registrant, or the chief operating officer of each contract market or swap execution facility that has granted trading privileges, whereby the employer or floor broker, appropriate registrant, principal or chief operating officer (on behalf of the contract market or swap execution facility) agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant as a result of a statutory disqualification proceeding under this section; provided, that, with respect to such sponsor, supervising employer or floor broker, supervising registrant or principal:

\* \* \* \* \*

(f) \* \* \*

(3) If the person is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from future wrongdoing by the applicant or registrant. Any decision providing for a conditioned or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on such statutory disqualification, and shall fix a time period after which the registrant and his or her sponsor, supervising employer or floor broker, or supervising registrant, principal, contract market, or swap execution facility may petition to lift or modify the conditions or restrictions in accordance with § 3.64.

\* \* \* \* \*

(l) The failure of any sponsor, supervising employer or floor broker, or supervising registrant, principal, contract market, or swap execution facility to fulfill its obligations with respect to supervision or monitoring of a conditioned or restricted registrant as agreed to in the Supplemental Sponsor Certification Statement shall be deemed a violation of this rule under the Act.

■ 19. Amend § 3.64 by revising paragraph (a)(2) to read as follows:

**§ 3.64 Procedure to lift or modify conditions or restrictions.**

(a) \* \* \*

(2) In the petition, the registrant and his or her sponsor, supervising

employer or floor broker, or supervising registrant, principal, contract market, or swap execution facility shall be limited to a showing, by affidavit, that the conditions or restrictions have been satisfied pursuant to the order which imposed them. The affidavit must be sworn to by a person with actual knowledge of the registrant's activities on behalf of the sponsor, supervising employer or floor broker, or supervising registrant, principal, contract market or swap execution facility.

\* \* \* \* \*

■ 20. Amend § 3.75 by revising paragraph (a) to read as follows:

**§ 3.75 Delegation and reservation of authority.**

(a) The Commission hereby delegates, until such time as it orders otherwise, to the Director of the Division of Swap Dealer and Intermediary Oversight or his or her designee the authority to grant or deny requests filed pursuant to § 3.12(g). The Director of the Division of Swap Dealer and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated to him pursuant to § 3.12(g). The Commission hereby delegates, until such time as it orders otherwise, the authority to perform all functions specified in subparts B through D of this part to the persons authorized to perform them thereunder.

\* \* \* \* \*

Issued in Washington, DC, on August 15, 2012, by the Commission.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

**Appendices to Registration of Intermediaries—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 and Wetjen voted in the affirmative; Commissioner O'Malia voted in the negative.

**Appendix 2—Statement of Chairman Gary Gensler**

I support the final rule to amend certain provisions of Part 3 of the Commission's regulations regarding the registration of intermediaries. The final amendments are necessary to conform existing regulations to the new requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The final rule would amend Part 3 to facilitate the extension of the existing registration process to apply to new

categories of registrants, such as swap dealers and major swap participants. Customers will benefit from the increased transparency of the registration process. The final amendments also modernize existing provisions that will apply to all Commission registrants.

In addition, the Commission has made technical changes to permit legal entities (in addition to natural persons) to register as floor traders. This change was required to implement the exception from the definition of a swap dealer for floor traders that trade cleared swaps on swap execution facilities.

**Appendix 3—Statement of Commissioner Scott O'Malia**

I respectfully dissent with the Commodity Futures Trading Commission's ("Commission") final rule to adopt certain conforming amendments to part 3 of the Commission's regulations regarding the registration of intermediaries.<sup>1</sup> I find it disturbing that coming off of two widely publicized incidents of intermediary fraud and misappropriation of customer funds (*i.e.*, MF Global Holdings and Peregrine Financial Group), the Commission is not adopting a rule that will provide customers with greater transparency of the professional and disciplinary background of Commission registrants. While I support most of what is included in this rule, I am unable to vote in the affirmative because of what has been excluded. The Commission indicates in the final rule that it will work with the National Futures Association ("NFA") to increase transparency, but does not set forth any details describing how the Commission and NFA will accomplish that goal.

The Commission and NFA should follow the lead of the Securities and Exchange Commission ("SEC") and the Financial Industry Regulatory Authority ("FINRA") in terms of how professional and disciplinary background information is disclosed to the potential customers of SEC-registered broker-dealers. FINRA's BrokerCheck<sup>®</sup> is a tool that provides potential customers with detailed information regarding the professional backgrounds of current and former FINRA-registered brokerage firms and brokers, as well as investment adviser firms and representatives.<sup>2</sup> Through BrokerCheck<sup>®</sup>, these customers can research certain criminal matters, regulatory actions, civil judicial proceedings, and financial matters in which the broker-dealer, one of its control affiliates, or representatives has been involved.

Today's futures markets need better technology solutions that will help futures customers make informed choices about the Commission-registered intermediaries with which they may wish to do business. Instead of promising to take action in the future, the Commission's final rule should do everything it can right now to protect customer funds. I believe the final rule should enable the public to receive access to information about current and formerly registered intermediaries who may seek to attain

<sup>1</sup> See 17 CFR Part 3 (Registration).

<sup>2</sup> For more information regarding BrokerCheck<sup>®</sup>, see <http://www.finra.org/Investors/Tools/Calculators/BrokerCheck>.

positions of trust with potential futures customers.

[FR Doc. 2012-20962 Filed 8-27-12; 8:45 am]

BILLING CODE 6351-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 21

[Docket No. FDA-2011-N-0252]

#### Office of the Secretary

#### 45 CFR Part 5b

#### Privacy Act, Exempt Record System

**AGENCY:** Office of the Secretary, Food and Drug Administration, HHS.

**ACTION:** Direct final rule.

**SUMMARY:** The Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS) will be implementing a new system of records, 09-10-0020, "FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC." HHS/FDA is exempting this system of records from certain requirements of the Privacy Act to protect the integrity of FDA's scientific misconduct inquiries and investigations and to protect the identity of confidential sources in such investigations. HHS/FDA is issuing a direct final rule for this action because the Agency expects that there will be no significant adverse comment on this rule.

**DATES:** This rule is effective January 10, 2013. Submit either electronic or written comments by November 13, 2012. If HHS/FDA receives no significant adverse comments within the specified comment period, the Agency will publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the Agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

**ADDRESSES:** You may submit comments, identified by Docket No. FDA-2011-N-0252, by any of the following methods:

#### Electronic Submissions

Submit electronic comments in the following way:

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

#### Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301-827-6870.
- *Mail/Hand delivery/Courier (For paper or CD-ROM submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

*Instructions:* All submissions received must include the Agency name and docket number for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Request for Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Frederick Sadler, Division of Freedom of Information, Office of Public Information and Library Services, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301-796-8975, [Frederick.Sadler@fda.hhs.gov](mailto:Frederick.Sadler@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA is implementing a new system of records called the "FDA Records Related to Research Misconduct Proceedings." The purpose of this system of records is to implement FDA's responsibilities for addressing research integrity and misconduct, in accordance with the Public Health Service (PHS) Policies on Research Misconduct (42 CFR part 93), for research performed by persons who are FDA employees, agents of the Agency, or who are affiliated with the Agency by contract or agreement. The term "research misconduct" is defined at 42 CFR 93.103 to mean "fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results." The general policy of the PHS Policies on Research Misconduct is that "Research misconduct involving PHS support is contrary to the interests of the PHS and the Federal government and to the health and safety of the public, to the integrity of research, and to the

conservation of public funds." (42 CFR 93.100(a)). The PHS Policies on Research Misconduct provide for a number of HHS administrative actions that can be taken in response to a research misconduct proceeding, such as the suspension of a contract, debarment, or an adverse personnel action against a Federal employee (42 CFR 93.407). In addition, under 42 CFR 93.401, FDA shall at any time during a research misconduct proceeding notify HHS' Office of Research Integrity (ORI) immediately to ensure that FDA's Office of Criminal Investigations, HHS Office of Inspector General, the Department of Justice, or other appropriate law enforcement agencies, are notified if there is a reasonable indication of possible violations of civil or criminal law.

FDA's new system of records will be modeled after the system of records maintained by ORI, entitled "HHS Records Related to Research Misconduct Proceedings, HHS/OPHS/ORI" System No. 09-37-0021 (59 FR 36717, July 19, 1994; revised most recently at 75 FR 44847, August 31, 2009).

FDA's scientific misconduct inquiry and investigation records are located in the Office of the Chief Scientist in FDA's Office of the Commissioner. FDA is preparing to organize and operate these records as a "system of records" as that term is defined by the Privacy Act. FDA is publishing a System of Records Notice (SORN) for this system in the **Federal Register** contemporaneous with publication of this direct final rule.

Under the Privacy Act (5 U.S.C. 552a), individuals have a right of access to information pertaining to them which is contained in a system of records. At the same time, the Privacy Act permits certain types of systems to be exempt from some of the Privacy Act requirements. For example, section 552a(k)(2) of the Privacy Act allows Agency heads to exempt from certain Privacy Act provisions a system of records containing investigatory material compiled for law enforcement purposes. This exemption's effect on the record access provision is qualified in that if the maintenance of the material results in the denial of any right, privilege, or benefit that the individual would otherwise be entitled to by Federal law, the individual must be granted access to the material except to the extent that the access would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. In addition, section 552a(k)(5) of the Privacy Act permits an Agency to

exempt investigatory material from certain Privacy Act provisions where such material is compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

As stated previously in this document, FDA may take administrative action in response to a research misconduct proceeding and, where there is a reasonable indication that a civil or criminal fraud may have taken place, will refer the matter to the appropriate investigative body. As such, FDA scientific misconduct inquiry and investigative files are records compiled for law enforcement purposes, and the subsection (k)(2) exemption is applicable to this system of records. Moreover, where misconduct inquiry and investigative files are compiled solely for the purpose of making determinations as to the suitability for appointment as special Government employees or eligibility for Federal contracts from PHS agencies, the subsection (k)(5) exemption is applicable.

HHS/FDA is therefore exempting this system under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, access and amendment provisions of the Act (subsections (c)(3), (d)(1) to (d)(4), (e)(4)(G) and (e)(4)(H), and (f)). As described in the following paragraphs, the exemptions are necessary in order to maintain the integrity of the research misconduct proceedings and to ensure that the FDA's efforts to obtain accurate and objective information will not be hindered. However, consideration would be given to requests for notification, access, and amendment that are addressed to FDA's Research Integrity Officer (System Manager) or Privacy Act Coordinator. The specific rationales for applying each of these exemptions are as follows:

- *Subsection (c)(3)*. An exemption from the requirement to provide an accounting of disclosures is needed during the pendency of a research misconduct proceeding. Release of an accounting of disclosures to an individual who is the subject of a pending research misconduct assessment, inquiry or investigation could prematurely reveal the nature and scope of the assessment, inquiry or investigation and could result in the

altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding.

- *Subsection (d)(1)*. An exemption from the access requirement is needed both during and after a research misconduct proceeding, to avoid revealing the identity of any source who was expressly promised confidentiality. Only material that would reveal a confidential source will be exempt from access. Protecting the identity of a source is necessary when the source is unwilling to report possible research misconduct because of fear of retaliation (e.g., from an employer or coworkers).

- *Subsections (d)(2) through (d)(4)*. An exemption from the amendment provisions is necessary while one or more related research misconduct proceedings are pending. Allowing amendment of investigative records in a pending proceeding could interfere with that proceeding; even after that proceeding is concluded, an amendment could interfere with other pending or prospective research misconduct proceedings, or could significantly delay inquiries or investigations in an attempt to resolve questions of accuracy, relevance, timeliness, and completeness.

- *Subsection (e)(4)(G) and (e)(4)(H)*. An exemption from the notification provisions is necessary during the pendency of a research misconduct proceeding, because notifying an individual who is the subject of an assessment, inquiry, or investigation of the fact of such proceedings could prematurely reveal the nature and scope of the proceedings and result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding.

- *Subsection (f)*. An exemption from the requirement to establish procedures for notification, access to records, amendment of records, or appeals of denials of access to records, is appropriate because the procedures would serve no purpose in light of the other exemptions, to the extent that those exemptions apply.

As stated previously in this document, FDA's new system of records will be modeled after the system of records maintained by ORI. ORI has exempted these records under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, access, accounting, and amendment provisions of the Privacy Act, to ensure that these records will not be disclosed inappropriately (59 FR 36717, July 19, 1994). Likewise, FDA believes that exempting the new system, "FDA

Records Related to Research Misconduct Proceedings, HHS/FDA," from the same Privacy Act provisions is essential to ensure that material in FDA's files related to research misconduct proceedings is not disclosed inappropriately. Except for information that would reveal the identity of a source who was expressly promised confidentiality, the access exemption will not prohibit HHS/FDA from granting respondents' access requests consistent with the PHS Policies on Research Misconduct (42 CFR Part 93), including in those cases in which a finding of research misconduct has become final and an administrative action has been imposed.

## II. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. HHS/FDA will be implementing a new system of records, 09-10-0020, "FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC." HHS/FDA is exempting this system of records from certain requirements of the Privacy Act to protect records compiled in the course of scientific misconduct inquiries and investigations and to protect the identity of confidential sources in such investigations. The Agency does not anticipate receiving any significant adverse comment on this rule.

Consistent with FDA's procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion proposed rule. The companion proposed rule provides the procedural framework within which the rule may be finalized in the event the direct final is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as comments regarding this direct rule.

FDA is providing a comment period on the direct final rule of 75 days after the date of publication in the **Federal Register**. If FDA receives any significant adverse comment, we intend to withdraw this direct final rule before its effective date by publication of a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse

comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment unless the comment also states why this rule would be ineffective without the additional change.

If FDA does not receive significant adverse comment, the Agency will publish a document in the **Federal Register** confirming the effective date of the final rule. The Agency intends to make the direct final rule effective 30 days after publication of the confirmation document in the Federal Register.

A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466). The guidance document may be accessed at <http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm>.

**III. Analysis of Impacts**

HHS/FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule imposes no duties or obligations on small entities, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that

includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

**IV. Request for Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects**

21 CFR Part 21

Privacy.

45 CFR Part 5b

Privacy.

Therefore, the Department of Health and Human Services is amending 21 CFR part 21 and 45 CFR part 5b to read as follows:

**Title 21**

**PART 21—PROTECTION OF PRIVACY**

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

**Authority:** 21 U.S.C. 371; 5 U.S.C. 552, 552a.

■ 2. Section 21.61 is amended by adding paragraph (d) to read as follows:

**§ 21.61 Exempt systems.**

\* \* \* \* \*

(d) Records in the following Food and Drug Administration Privacy Act Records Systems are exempt under 5 U.S.C. 552a(k)(2) and (k)(5) from the provisions enumerated in paragraph (a)(1) through paragraph (3) of this section: FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC, 09–10–0020.

**Title 45**

**PART 5b—PRIVACY ACT REGULATIONS**

■ 3. The authority citation for 45 CFR part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

■ 4. Section 5b.11 is amended by adding paragraph (b)(2)(vii)(C) to read as follows:

**§ 5b.11 Exempt systems.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vii) \* \* \*

(C) FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC.

\* \* \* \* \*

Dated: July 20, 2012.

**Kathleen Sebelius,**  
*Secretary of Health and Human Services.*  
[FR Doc. 2012–20889 Filed 8–27–12; 8:45 am]  
**BILLING CODE 4160–01–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG–2012–0618]

RIN 1625–AA00

**Safety Zone; Tom Lyons Productions Fireworks, Long Island Sound, Sands Point, NY**

**AGENCY:** Coast Guard, DHS.  
**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of Long Island Sound, in the vicinity of Sands Point, NY. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This rule is intended to restrict all vessels from a portion of Long Island Sound before, during, and immediately after the fireworks event.

**DATES:** This rule will be effective from 10:30 p.m. on October 6, 2012 until 11:45 p.m. on October 7, 2012. This rule will be enforced from 10:30 p.m. to 11:45 p.m. on October 6, 2012, and from 10:30 p.m. to 11:45 p.m. on October 7, 2012.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2012–0618. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Kristopher Kesting, Sector NY Waterways Management, U.S. Coast Guard; Telephone (718) 354-4154, E-Mail [Kristopher.R.Kesting@uscg.mil](mailto:Kristopher.R.Kesting@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

DHS—Department of Homeland Security  
FR—Federal Register  
NPRM—Notice of Proposed Rulemaking  
COTP—Captain of the Port

**A. Regulatory History and Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because sufficient information about the event was not received in time to publish a NPRM followed by a final rule before the effective date, thus making the publication of a NPRM impractical. The Coast Guard received the information about the event on June 25, 2012. Any delay encountered in this regulation’s effective date by publishing a NPRM would be contrary to public interest, since immediate action is needed to provide for the safety of life and property on navigable waters from the hazards associated with fireworks including unexpected detonation and burning debris.

The rule must become effective on the date specified in order to provide for the safety of spectators and vessels operating in the area near this event. Delaying this rule would be impracticable and contrary to the public interest, and would expose spectators and vessels to the hazards associated with the fireworks event.

**B. Basis and Purpose**

The legal basis for this rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701,

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

This temporary safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

**C. Discussion of the Final Rule**

This rule establishes a temporary safety zone on the navigable waters of Long Island Sound, in the vicinity of Sands Point, NY. All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) New York or the designated representative during the enforcement of the temporary safety zone. Entering into, transiting through, or anchoring within the temporary safety zone is prohibited unless authorized by the COTP New York, or the designated representative.

Based on the inherent hazards associated with fireworks, the COTP New York has determined that fireworks launches in close proximity to water crafts pose a significant risk to public safety and property. The combination of increased number of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, and debris, especially burning debris falling on passing or spectator vessels has the potential to result in serious injuries or fatalities. This temporary safety zone will restrict vessels from a portion of Long Island Sound around the location of the fireworks launch platform before, during, and immediately after the fireworks display.

The Coast Guard has determined that this regulated area will not have a significant impact on vessel traffic due to its temporary nature and limited size and the fact that vessels are allowed to transit the navigable waters outside of the regulated area.

Advance public notifications will also be made to the local mariners through appropriate means, which will include, but are not limited to, the Local Notice to Mariners as well as Broadcast Notice to Mariners.

**D. Regulatory Analyses**

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

**1. Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory

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

The Coast Guard’s implementation of this temporary safety zone will be of short duration and is designed to minimize the impact to vessel traffic on the navigable waters. This temporary safety zone will only be enforced for approximately 75 minutes, in the late evening. Due to the location, vessels will be able to transit around the zone in a safe manner.

**2. Impact on Small Entities**

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

(1) This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the navigable waters in the vicinity of the marine event during the effective period.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for 75 minutes; late at night when vessel traffic is low, vessel traffic could pass safely around the safety zone, and the Coast Guard will notify mariners before activating the zone by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

**3. Assistance for Small Entities**

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

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

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

#### 4. Collection of Information

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

#### 5. Federalism

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

#### 6. Protest Activities

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

#### 7. Unfunded Mandates Reform Act

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

#### 8. Taking of Private Property

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

#### 9. Civil Justice Reform

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

#### 10. Protection of Children

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

#### 11. Indian Tribal Governments

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

#### 12. Energy Effects

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

#### 13. Technical Standards

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

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the

discovery of a significant environmental impact from this rule.

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

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

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

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

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

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

■ 2. Add § 165.T01-0618 to read as follows:

#### § 165.T01-0618 Safety Zone; Tom Lyons Productions Fireworks, Long Island Sound, Sands Point, NY.

(a) *Regulated Area.* The following area is a temporary safety zone: all navigable waters of Long Island Sound within a 240-yard radius of the fireworks barge located in approximate position 40°51'57.09" N, 073°44'04.20" W, in the vicinity of Sands Point, NY, approximately 390 yards west of the tip of Sands Point.

(b) *Effective Dates and Enforcement Periods.* This rule will be effective from 10:30 p.m. on October 6, 2012 until 11:45 p.m. on October 7, 2012. This rule will be enforced from 10:30 p.m. to 11:45 p.m. on October 6, 2012, and from 10:30 p.m. to 11:45 p.m. on October 7, 2012.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to transit the safety zone without the permission of the COTP.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718-354-4353 (Sector New York command center) to obtain permission to do so.

(5) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or the designated representative.

(6) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(7) The COTP or the designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

Dated: August 17, 2012.

**G. Loebel,**

*Captain, U.S. Coast Guard, Captain of the Port New York.*

[FR Doc. 2012-21193 Filed 8-27-12; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2012-0296; FRL-9720-6]

### Approval and Promulgation of Air Quality Implementation Plans; State of New York; Regional Haze State Implementation Plan and Federal Implementation Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action on the Regional Haze State Implementation Plan (SIP) submitted by the State of New York. EPA is approving seventeen source-specific SIP revisions containing permits for Best Available Retrofit Technology, revisions for Title 6 of the New York Codes, Rules and Regulations, Part 249, "Best Available Retrofit Technology (BART)" and section 19-0325 of the New York Environmental Conservation Law which regulates the sulfur content of fuel oil. These revisions to the SIP addressing regional haze were submitted by the State of New York on March 15, 2010, and supplemented on August 2, 2010, April 16, 2012 and July 2, 2012. These SIP revisions were submitted to address Clean Air Act requirements and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. Although New York State addressed most of the issues identified in EPA's proposal, EPA is promulgating a Federal Implementation Plan to address two sources where EPA is disapproving New York's BART determinations.

**DATES:** This rule is effective on September 27, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2012-0296. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Kelly, Air Planning Section, Air Programs Branch, EPA Region 2, 290 Broadway, New York, New York 10007-1866. The telephone number is (212) 637-4249. Mr. Kelly can also be reached via electronic mail at [kelly.bob@epa.gov](mailto:kelly.bob@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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- IV. What comments did EPA receive on its proposal and what were EPA's responses?
- V. What are EPA's conclusions?
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Throughout this document, wherever "Agency," "we," "us," or "our" is used, we mean the EPA.

### I. What action is EPA taking?

EPA is approving New York's State Implementation Plan (SIP) revisions addressing regional haze submitted on March 15, 2010, and supplemented on August 2, 2010, April 16, 2012, and July 2, 2012. EPA is supplementing New York's SIP with a Federal Implementation Plan (FIP) for three units at two BART sources where EPA is disapproving these BART determinations. The following paragraphs summarize each of EPA's actions.

EPA is approving aspects of New York's Regional Haze SIP revision as follows:

- The measures enacted by New York are shown to produce emission reductions that are sufficient to meet New York's share of the emission reductions needed to meet reasonable progress goals (found at 40 CFR 51.308(d)(1)) at Class I areas affected by New York's emissions.

- New York's Long Term Strategy, since New York submitted final approvable permit modifications for all facilities on April 16, 2012 and July 2, 2012 (except for the Roseton and Danskammer Generating Stations), in a timely manner with the level of control in EPA's April 25, 2012 proposal. EPA's FIP contains BART determinations and emission limits for the Roseton and Danskammer Generating Stations.

- New York's SIP revision consisting of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR), Part 249, "Best Available Retrofit Technology (BART)."

- New York's SIP revision consisting of section 19-0325 of the New York Environmental Conservation Law which regulates the sulfur content of fuel oil.

EPA is approving the following facility BART determinations and

emissions limits since New York submitted final permit modifications to EPA as SIP revisions on April 16, 2012 and July 2, 2012, and the revisions match the terms of our April 25, 2012 proposal published in the **Federal Register** (77 FR 24794):

- ALCOA Massena Operations (West Plant)
- Arthur Kill Generating Station [NRG]
- Bowline Generating Station [GenOn]
- Con Edison 59th Street Station
- EF Barrett Power Station [National Grid (NG)]
- Holcim (US) Inc—Catskill Plant
- International Paper Ticonderoga Mill
- Kodak Operations at Eastman Business Park
- Lafarge Building Materials
- Lehigh Northeast Cement
- Northport Power Station [NG]
- Oswego Harbor Power [NRG]
- Owens-Corning Insulating Systems Feura Bush
- Ravenswood Generating Station [TC]
- Ravenswood Steam Plant [Con Edison]
- Roseton Generating Station—Dynegy (NO<sub>x</sub> and PM limits only)
- Samuel A Carlson Generating Station [Jamestown Board of Public Utilities (BPU)]
- Syracuse Energy Corporation [GDF Suez]

EPA is disapproving the following BART determinations:

- New York's Sulfur Dioxide (SO<sub>2</sub>) BART determinations and emissions limits for Units 1 and 2 of Dynegy's Roseton Generating Station.
- New York's SO<sub>2</sub>, Nitrogen Oxide (NO<sub>x</sub>) and Particulate Matter (PM) BART determinations and emissions limits for Unit 4 of Dynegy's Danskammer Generating Station.

EPA is promulgating a FIP to address the BART determinations identified above in our partial disapproval of New York's Regional Haze SIP.

EPA is taking this action pursuant to section 110 of the Clean Air Act (the Act or CAA). For additional details on EPA's analysis and findings, the reader is referred to the April 25, 2012 proposal (77 FR 24794) and the May 9, 2012 Notice of Data Availability (77 FR 27162). New York's entire Regional Haze SIP revisions and the full text of the public comments are included in the Docket (EPA-R02-OAR-2012-0296) and available at [www.regulations.gov](http://www.regulations.gov).

## II. What additional SIP revisions did New York submit consistent with EPA's proposal?

On April 25, 2012, EPA proposed to take action on a revision to the SIP addressing regional haze submitted by

New York. In that proposal, EPA proposed to address through a FIP certain requirements not addressed in New York's regional haze SIP submission or, alternatively, to approve a substantively identical SIP revision by New York, should the state timely submit such a revision. In two letters, both dated April 16, 2012, New York submitted the additional materials relevant to our proposed action on its regional haze SIP submission, including proposed SIP revisions addressing the requirements for BART for a number of sources and addressing the New York State Law that regulates the sulfur content of fuel oil. Subsequently, on May 9, 2012 (77 FR 27162), EPA published a notice of data availability to notify the public that New York submitted additional information to supplement New York's Regional Haze SIP.

As discussed in the May 9, 2012 notice, EPA was aware that New York intended to submit additional information relevant to the action EPA was proposing on New York's Regional Haze SIP. EPA, therefore, discussed in its proposal the possible actions EPA would take should this information be timely submitted. EPA included in the record the draft information that New York was in the process of finalizing and submitting as part of its SIP revision. EPA evaluated this draft information as part of the Agency's proposed action on New York's Regional Haze SIP. EPA's May 9, 2012 notice indicated that EPA's final action will be based on the proposed rulemaking, the additional information identified in the notice of data availability, and an assessment of any public comments that may be received. On July 2, 2012, New York submitted the remaining adopted permits implementing BART which were not included in the April 16, 2012 submission.

### A. SIP Revisions for BART Determinations

New York's April 16, 2012 SIP revisions requested that EPA take action on proposed SIP revisions from New York in parallel with the state's processing of the following draft Title V permits that the state intended to submit as SIP revisions to meet the BART requirement: Bowline Generating Station, Danskammer Generating Station, Kodak Operations at Eastman Business Park, Oswego Harbor Power, Owens-Corning Insulating Systems, and Syracuse Energy Corporation.

New York's April 16, 2012 SIP revisions also requested processing of the following adopted Title V permits

implementing BART for the following facilities: ALCOA Massena Operations (West Plant), Arthur Kill Generating Station, Con Edison 59th Street Station, EF Barrett Power Station, Holcim (US) Inc—Catskill Plant, International Paper Ticonderoga Mill, Lafarge Building Materials, Lehigh Northeast Cement, Northport Power Station, Ravenswood Generating Station, Ravenswood Steam Plant, Roseton Generating Station<sup>1</sup>, and Samuel A Carlson Generating Station.

Lastly, New York submitted a letter dated July 2, 2012 containing SIP revisions for the remaining adopted Title V permits implementing BART for five of the following facilities previously discussed in New York's April 16, 2012 letter: Bowline Generating Station, Kodak Operations at Eastman Business Park, Oswego Harbor Power, Owens-Corning Insulating Systems, and Syracuse Energy Corporation. As further discussed in the Response to Comments below, New York also submitted an updated permit for Lehigh Northeast Cement.

New York did not make any substantive changes to the source specific Title V permits to incorporate BART other than those discussed in EPA's April 25, 2012 proposal and May 9, 2012 notice or as discussed in the Response to Comments below. Since the SIP revisions match the terms of our proposed FIP, and the SIP revisions have been adopted by New York and submitted formally to EPA for incorporation into the SIP, EPA is approving the following facility BART determinations and emissions limits: ALCOA Massena Operations (West Plant), Arthur Kill Generating Station, Bowline Generating Station, Con Edison 59th Street Station, EF Barrett Power Station, Holcim (US) Inc—Catskill Plant, International Paper Ticonderoga Mill, Kodak Operations at Eastman Business Park, Lafarge Building Materials, Lehigh Northeast Cement, Northport Power Station, Oswego Harbor Power, Owens-Corning Insulating Systems, Ravenswood Generating Station, Ravenswood Steam Plant, Roseton Generating Station (NO<sub>x</sub> and PM limits only as contained in the adopted Title V permit), Samuel A Carlson Generating Station, and Syracuse Energy Corporation.

### B. SIP Revision for 6 NYCRR, Part 249, "Best Available Retrofit Technology (BART)"

New York promulgated Part 249 to require BART eligible facilities to

<sup>1</sup>Notwithstanding the submission of the permit, EPA is promulgating a FIP for SO<sub>2</sub> BART for Roseton as explained in this action.

perform an analysis of potential controls for each visibility-impairing pollutant. EPA evaluated New York's general BART rule submittal for consistency with the CAA and EPA's regulations, including public notice and hearing requirements, and determined that the rule met these requirements. EPA is approving New York's Part 249 as part of the SIP.

### C. SIP Revision for New York's Low Sulfur Fuel Oil Strategy

New York's April 16, 2012 SIP revisions request that EPA include in New York's Regional Haze SIP the New York State legislation regulating the sulfur content of fuel oil, Bill Number S1145C, which amends the New York Environmental Conservation Law to include a new section 19-0325, effective July 15, 2010. EPA's May 9, 2012 notice discussed New York's SIP revision request and EPA's proposed approval of this request.

Major SO<sub>2</sub> emission reductions are obtained as a result of the legislation being implemented. These reductions are occurring in 2012, well before the 2016 "ask" by MANE-VU<sup>2</sup>. EPA proposed to determine that New York's low sulfur fuel oil strategy in combination with the other planned reductions will provide the necessary reductions from New York for other Class I areas to meet their respective Reasonable Progress Goals. Please refer to the April 25, 2012 proposal for additional information regarding New York's Low Sulfur Fuel Oil Strategy. In addition, existing provisions of 6 NYCRR, Subpart 225-1, "Fuel Composition and Use—Sulfur Limitations," are incorporated in the current federally approved New York SIP, and Subpart 225-1 contains provisions regarding enforcement and compliance, emissions and fuel monitoring, reporting, recordkeeping, sampling and analysis. EPA is approving New York's request to incorporate section 19-0325 of New York's Environmental Conservation Law as part of the SIP. As we noted in our proposal, New York's section 19-0325, sulfur in fuel rule, does not completely fulfill the sulfur in fuel requirements MANE-VU modeled to show progress toward reducing haze. EPA is approving New York's submittal of its sulfur in fuel law as it helps meet its progress requirements. We describe later how

New York meets its share toward making the regional haze progress goal without the full program.

### III. What is contained in EPA's federal implementation plan for New York's regional haze program?

As discussed in EPA's April 25, 2012 proposal, in the event New York did not submit a SIP revision with final permit modifications for all BART sources, which match the terms of our proposed FIP, EPA proposed to publish a final rulemaking with a FIP for those BART sources. While New York's revised SIP covered most of the units addressed in EPA's proposal, it did not include final BART permit modifications consistent with our proposed FIP for certain of the units at Dynegey's Roseton and Danskammer Generating Stations. Therefore EPA is disapproving those portions of the SIP and promulgating a FIP addressing the SO<sub>2</sub> BART requirements and setting emissions limits for Units 1 and 2 of Dynegey's Roseton Generating Station, and addressing the SO<sub>2</sub>, NO<sub>x</sub> and PM BART requirements and setting emissions limits for Unit 4 of Dynegey's Danskammer Generating Station. New York did submit a SIP revision with final BART permit modifications consistent with EPA's proposed FIP with respect to NO<sub>x</sub> and PM for Units 1 and 2 at Dynegey's Roseton Generating Station. EPA therefore is not adopting a FIP for the NO<sub>x</sub> and PM BART determinations for Roseton Units 1 and 2.

The final FIP includes the following elements:

- NO<sub>x</sub> BART determination and an emission limit for Danskammer Generating Station Unit 4 of 0.12 pounds per million British thermal units (lb/MMBtu), to be met on a 24-hour average during the ozone season (May through September)<sup>3</sup> and a 30-day rolling average the rest of the year, and a requirement that the owners/operators comply with this NO<sub>x</sub> BART limit by July 1, 2014.
- SO<sub>2</sub> BART determination and an emission limit for Danskammer Generating Station Unit 4 of 0.09 lb/MMBtu, to be met on a 24-hour average, and a requirement that the owners/operators comply with this SO<sub>2</sub> BART limit by July 1, 2014.
- PM BART determination and an emission limit for Danskammer Generating Station Unit 4 of 0.06 lb/MMBtu, to be met on a one-hour average, and a requirement that the

owners/operators comply with this PM BART limit by July 1, 2014.

- SO<sub>2</sub> BART determination and an emission limit for Roseton Generating Station Unit 1 and Unit 2 of 0.55 lb/MMBtu, to be met on a 24-hour average, and a requirement that the owners/operators comply with this SO<sub>2</sub> BART limit by January 1, 2014.

- Monitoring, record-keeping, and reporting requirements for the above three units to ensure compliance with these emission limitations.

EPA's April 25, 2012 proposal contained proposed regulatory language for § 52.1686 of title 40 of the Code of Federal Regulations (CFR) for the purpose of adding new provisions containing EPA's FIP for Regional Haze. EPA notes that since New York submitted SIP revisions to address most of EPA's proposed FIP, EPA is finalizing only the regulatory language in section 51.1686 that covers EPA's FIP for the Roseton and Danskammer Generating Stations.

We encourage New York at any time to submit a SIP revision to incorporate provisions that match the terms of our FIP, or relevant portion thereof. If EPA were to approve such a SIP revision, after public notice and comment, the SIP approved provisions could replace the FIP provisions.

### IV. What comments did EPA receive on its proposal and what were EPA's responses?

EPA received several comments from the following parties in response to our April 25, 2012 proposal and May 9, 2012 notice of data availability: ALCOA Massena Operations (ALCOA), Dynegey Northeast Generation, Inc. (Dynegey), Earthjustice on behalf of the National Parks Conservation Association and Sierra Club (Earthjustice), GenOn Bowline, LLC (Bowline), Lehigh Northeast Cement Group (Lehigh), New York State Department of Environmental Conservation (New York), and the United States Forest Service (US Forest Service). A summary of the comments and EPA's responses are provided below.

#### BART Comments—BART Permit Modifications

*Comment:* New York commented that EPA should update the number of BART permits that have been issued in final form by New York.

*Response:* We agree and we have taken the permits into account. In section II. of this action—"What Additional SIP revisions did New York Submit Consistent with EPA's Proposal?" EPA discusses those final BART permits issued by New York.

<sup>2</sup> MANE-VU is the Mid-Atlantic/North East Visibility Union, a regional planning organization, comprising Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, the District of Columbia, the Penobscot Nation, and the St. Regis Mohawk Tribe.

<sup>3</sup> Note the averaging times for the FIP are modeled on New York's applicable SIP in order to coordinate the FIP with other existing New York limitations.

*Comment:* New York commented it will not be finalizing revisions to permits for the Roseton and Danskammer Generating Stations to address EPA's proposed emission limits prior to EPA's deadline for a final FIP.

*Response:* EPA's April 25, 2012 proposal contained BART emission limits for Roseton and Danskammer Generating Stations which differed from the BART limits identified by New York for Roseton and proposed for Danskammer. In section III. of this action—"What is Contained in EPA's Federal Implementation Plan for New York's Regional Haze Program?" EPA discusses the final FIP for the Roseton and Danskammer Generating Stations.

*Comment:* New York provided several comments regarding EPA's proposed regulatory language for section 52.1686 of title 40 of the CFR and how the monitoring requirements and other provisions should be revised to better reflect the monitoring requirements that are characteristic for the different types of emissions sources. These include electric generating units, large industrial boilers and other types of source categories.

*Response:* As noted above, since New York submitted SIP revisions to address EPA's proposed FIP, EPA is finalizing the regulatory language in section 51.1686 accordingly. Therefore, the regulatory language in section 51.1686 contains provisions to only cover EPA's FIP for the Roseton and Danskammer Generating Stations. These changes to section 51.1686 address New York's comments.

*Comment:* ALCOA commented that the monitoring, recordkeeping, and reporting requirements which EPA proposed in section 52.1686 for the proposed FIP were inappropriate for a primary aluminum production facility. ALCOA stated EPA should either approve the New York BART SIP requirements for the facility, or adopt the monitoring, recordkeeping and reporting requirements in New York's BART permit verbatim into the final FIP.

*Response:* Following our proposed rule, New York adopted the final Title V permit for the ALCOA Massena Operations (West Plant) facility implementing BART. New York's permit included the appropriate monitoring, recordkeeping and reporting requirements and the state formally submitted the BART permit as a SIP revision to EPA. EPA is approving the New York BART SIP requirements for the ALCOA Massena Operations (West Plant) facility.

*Comment:* Dynegy objected to any permit condition which would require

the Danskammer or Roseton Units to burn a particular fuel or switch fuel forms.

*Response:* EPA agrees and is not adopting any such conditions. As indicated in the April 25, 2012 proposal, EPA has determined that these emission limits can be reasonably met with any of the fuels and/or combination of fuels evaluated for this BART determination and available to the plant.

*Comment:* Bowline commented that as a result of a clerical error unrelated to EPA's rulemaking, the draft Title V permit referred to by EPA in the April 25, 2012 proposal for New York's Regional Haze SIP was not the same version of the draft Title V permit that New York provided to Bowline and did not accurately reflect the BART requirements proposed to be imposed on the Bowline Units. More specifically, Bowline presented the correct NO<sub>x</sub> BART emission limits and permit conditions in the comment letter to EPA. Bowline requested EPA to revise the SIP approval or, if necessary, the FIP, to reflect the correct Title V permit requirements for the Bowline Units which were arrived at in New York's BART Determination.

*Response:* EPA acknowledges that the draft Title V permit for Bowline included with the April 25, 2012 proposal was not the correct version of the draft Title V permit developed by New York for Bowline. After further inspection of the files contained in the Docket, and the additional information presented to EPA by Bowline and New York, EPA confirmed that the other documents used as the basis for EPA's April 25, 2012 proposal, with the exception of the draft Title V permit, were correct and acceptable for the purpose of proposing a BART determination. The clerical error made at the state-level of the BART permit modification, did not change the underlying technical BART determination analysis, and New York's February 15, 2012 Environmental News Bulletin contained the correct BART determination and permit conditions that were noticed for public review by the state. Upon further review, EPA agrees with Bowline and New York that our April 25, 2012 proposal presented NO<sub>x</sub> BART emission limits that were different from the limits and permit conditions which were available for public review at the state-level, and which New York ultimately adopted for the Bowline Units.

EPA's April 25, 2012 proposal indicated NO<sub>x</sub> emissions from Bowline Units 1 and 2 would be limited to 0.15 lb/MMBtu on a 24-hour average during

the ozone season and a 30-day rolling average during the non-ozone season, with compliance by January 1, 2014. Bowline and New York provided further documentation to EPA that the correct BART determination and permit conditions that were noticed for public review by the state in the February 15, 2012 Environmental News Bulletin, were as follows:

- By July 1, 2014, NO<sub>x</sub> emission from Units 1 and 2 are limited to 0.15 lb/MMBtu when burning natural gas, measured on a 24-hour average during the ozone season and a 30-day rolling average during the non-ozone season.

- By July 1, 2014, NO<sub>x</sub> emission from Units 1 and 2 are limited to 0.25 lb/MMBtu when burning oil, measured on a 24-hour average during the ozone season and a 30-day rolling average during the non-ozone season

- By July 1, 2014, oil-firing is limited to 3.1 million barrels during the ozone season and 4.6 million barrels during the non-ozone season.

- The limit for oil and gas dual fuel firing periods will be heat input weighted between 0.15 lb/MMBtu and 0.25 lb/MMBtu.

The correct NO<sub>x</sub> BART determination requires an emission limit of 0.15 lb/MMBtu when burning natural gas and 0.25 lb/MMBtu when burning oil. These are the limits that reflect Bowline's implementation of BART. In response to the clerical error, EPA has determined that these emission limits are acceptable for BART, and are based on New York's BART determination for Bowline and merely are reflective of the limits that Bowline can achieve when implementing BART for different types of fuels. EPA notes these limits are also similar to other NO<sub>x</sub> BART emission limits EPA is approving in this action for other similar peaking units that are used only a small period of time each year. These limits are based on a detailed technical analysis which considers circumstances specific to Bowline, consistent with EPA's BART Guidelines.

With respect to the BART compliance date, EPA's April 25, 2012 proposal indicated a compliance date of January 1, 2014, consistent with the compliance date contained in New York's BART regulation Part 249. New York issued final BART permit modifications for the Bowline Units requiring compliance by July 1, 2014. While the July 1, 2014 compliance date is six months later than the January 1, 2014 compliance date in New York's Part 249, EPA has determined that the July 1, 2014 compliance date is still consistent with EPA's BART Guidance for compliance as expeditiously as possible but no later

than five years from EPA's approval of the state's Regional Haze SIP.

EPA notes that the previous versions of the BART Permit modifications indicated these emission limits do not apply during start-up and shut-down periods. However, EPA informed New York that the BART emission limits must apply at all times. Therefore, the final BART determinations and final BART Title V permit modification submitted to EPA as part of the July 2, 2012 SIP revisions do not contain any exclusions for start-up and shut-down periods. Lastly, EPA did not receive any other comments related to Bowline's BART determinations or permit limits, except from Bowline itself. In response to Bowline's comments and additional supporting analyses and documentation provided by Bowline and New York, EPA is therefore approving Bowline's BART determinations and BART emission limit permit conditions presented above.

*Comment:* New York and Lehigh both commented that the Title V permit referred to by EPA in the April 25, 2012 proposal for New York's Regional Haze SIP was being modified. New York and Lehigh requested that the requirement to install a baghouse on the rotary kiln be removed from the permit since the requirement to install a baghouse was not intended to meet BART, but to meet the federal Portland Cement Maximum Achievable Control Technology (MACT) which EPA is currently reevaluating to determine the deadlines for compliance. Lehigh and New York also requested the permit include a new SO<sub>2</sub> limit of 1.50 lb/MMBtu to supplement the fuel sulfur limits proposed as BART.

*Response:* EPA has determined that the amendments to Lehigh's Title V permit are acceptable. The permit amendments do not change the PM BART emission limit of 0.30 lb/ton feed proposed by EPA in the April 25, 2012 proposal for the rotary kiln. The permit amendments also provide a new SO<sub>2</sub> BART emission limit of 1.50 lb/MMBtu that will supplement the existing limits. Compliance with the new SO<sub>2</sub> limit will be determined by annual stack tests. These revisions to the permit are consistent with the underlying technical BART determination analysis. New York issued a new public notice of the permit revisions for public review, and then adopted the permit modifications.

EPA did not receive any other comments related to Lehigh's BART determinations or permit limits, except from Lehigh and New York. In response to these comments on EPA's April 25, 2012 proposal, and additional supporting analyses and documentation provided by Lehigh and New York, EPA

is therefore approving Lehigh's BART determinations and BART emission limit permit conditions presented above since the revised Title V permit is consistent with the terms of our proposed FIP, has been adopted by New York, and submitted formally to EPA for incorporation into the SIP.

#### *BART Comments—Emission Limits*

*Comment:* U.S. Forest Service supported EPA's proposals to require a 0.55 lb/MMBtu SO<sub>2</sub> emission limit for Roseton Units 1 and 2, 0.09 lb/MMBtu SO<sub>2</sub> emission limit for Danskammer Unit 4, and 0.20 lb/MMBtu NO<sub>x</sub> emission limit for Kodak Boiler 42 if the Boiler is repowered with natural gas.

*Response:* EPA acknowledges the support for the proposed BART emission limits. EPA is adopting these limits.

*Comment:* Dynegy pointed out that the operators of the Danskammer and Roseton Generating Stations are currently the subject of Chapter 11 bankruptcy proceedings, and therefore not in a position to select any of the SO<sub>2</sub> BART FIP emission limits proposed by EPA.

*Response:* EPA has an obligation to either approve New York's Regional Haze SIP or promulgate a FIP that establishes BART for the Danskammer and Roseton Generating Stations, regardless of other legal proceedings that may involve the Danskammer and Roseton Generating Stations. EPA is adopting SO<sub>2</sub> BART FIP emission limits for the Danskammer and Roseton Generating Stations.

#### *BART Comments—Specific to Dynegy BART Determinations*

*Comment:* Earthjustice urged EPA to finalize the proposed disapproval of the SO<sub>2</sub> BART determination for Danskammer Unit 4 and endorsed EPA's reasons for proposing to disapprove New York's BART analysis.

*Response:* EPA is finalizing our proposed disapproval of the SO<sub>2</sub> BART determination for Danskammer and is adopting SO<sub>2</sub> BART FIP emission limits for the facility.

*Comment:* Earthjustice commented that New York improperly allowed Dynegy to conduct the BART analysis and select its emission limitation.

*Response:* It is common practice for the facility to do the technical analysis in order to determine BART for eligible sources, submit that information to the state and then for the state to review and adopt or modify the BART determination. In fact, with respect to the Regional Haze program, New York adopted the regulation 6 NYCRR, Part 249, "Best Available Retrofit

Technology (BART)" to require BART eligible facilities to perform an analysis of potential controls for each visibility-impairing pollutant. Congress crafted the Clean Air Act to provide for states to take the lead in developing implementation plans but balanced that decision by requiring EPA to review the plans to determine whether a SIP meets the requirements of the Act. In undertaking such a review, EPA does not usurp a state's authority but ensures that such authority is reasonably exercised. BART determinations are the responsibility of the states, which have the freedom to determine the weight and significance of the statutorily required five-factors in a BART determination. EPA then reviews a state's determination as included in its regional haze plan. With respect to New York's Regional Haze plan, EPA determined that New York addressed the five factors for the BART determinations sufficiently to allow EPA to conclude that the state's BART determinations were reasonable, for all BART-eligible facilities except for Roseton and Danskammer facilities. In the case of the Roseton and Danskammer facilities, where EPA's review of New York's determination resulted in a different conclusion, EPA developed a FIP.

*Comment:* Earthjustice commented New York's failure to select a specific technology as BART for either its NO<sub>x</sub> or SO<sub>2</sub> determination for Danskammer results in an arbitrary emission limit that cannot be considered BART. Earthjustice argued that New York and EPA do not have the statutory authority under Section 169A(b)(2) of the Act to set an emission limitation for NO<sub>x</sub> and SO<sub>2</sub> without first designating a particular control technology as BART.

*Response:* EPA's BART Guidelines make clear that processes and practices, or a combination thereof, may be designated as BART. See 40 CFR part 51 App. Y, section IV.D. The applicable regional haze regulations and EPA's BART Guidelines define BART as "an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction."<sup>4</sup> The application of practices and processes to the operation of a facility can be considered the "best system."

New York's proposed BART determination for the Danskammer facility listed a combination of policies and practices as a control option for both SO<sub>2</sub> and NO<sub>x</sub>. To accomplish a side-by-side comparison with other

<sup>4</sup> See 40 CFR 51.301 (defining "BART"); 40 CFR part 51 App. Y.

control options, it calculated an emission limitation that could be achieved by employing those processes and practices. All control options were reviewed using the procedure set forth in EPA's BART Guidelines, and New York reached a determination that the combination of processes and practices was BART. It was not necessary for New York to set its emission limitations with reference to a specific technology. The chosen emission limitations for both NO<sub>x</sub> and SO<sub>2</sub> were set with reference to the application of a combination of practices and processes. This was done in accordance with the top-down BART determination analysis contained in EPA's BART Guidelines.<sup>5</sup> Although EPA objected to the emission limitation set for SO<sub>2</sub>, it did not object to New York's proposed determination that a combination of practices and processes was BART for the Danskammer facility. Earthjustice's comments do not accurately reflect the BART analysis conducted by New York or by EPA.

*Comment:* Earthjustice said EPA must impose a more stringent SO<sub>2</sub> BART FIP emission limit of 0.06 lb/MMBtu instead of EPA's proposed 0.09 lb/MMBtu because EPA failed to consider all available control technologies, including a wet scrubber or circulating dry scrubber. Earthjustice also commented that the proposed emission limit is not associated with any specific control technology.

*Response:* EPA disagrees that the BART analysis failed to consider all available control technologies and EPA disagrees that the limit is not associated with a control technology. In Dynegey's submission to New York, it determined that BART was lowering Unit 4's current SO<sub>2</sub> permit limit from 1.10 lbs/MMBtu to 0.50 lbs/MMBtu. This limit was based on the facility putting in place a combination of processes/practices, including: (1) Use of alternative coal, (2) co-firing with natural gas, and (3) installation of post combustion controls. Dynegey identified this particular limit as a control option based on an engineering study that identified and evaluated the available SO<sub>2</sub> control options. This was done in accordance with Step One of the BART Guidelines, which requires the state to identify all possible control options that could be used as BART. 40 CFR part 51 App. Y. Dynegey's consultants used a fuel cost table and calculations contained in an attached excel worksheet titled "Fuel Costs" to determine the emission limitation that could be achieved by applying the above practices/processes as BART.

Those calculations make clear that the estimated emission limitation for SO<sub>2</sub> was set using factors based on the use of alternative fuels, co-firing with natural gas, and installing post combustion controls.

The engineering study identified other control options, including Flue Gas Desulfurization ("FGD") options with Lime Based Spray Dryer; Circulating Dry Scrubber and Wet Limestone; options for Dry Sorbent Injection of minerals such as Trona; combustion of alternative coals; 100% combustion of natural gas; and co-firing natural gas. In accordance with Step Two of the BART Guidelines, the facility evaluated the technical feasibility of each control option, concluding that all options were technically feasible for the Danskammer facility. It then evaluated each control option's cost effectiveness, conducted impact analyses on cost of compliance, energy impacts, and nonair quality environmental impacts, and modeled selected control option's visibility impact using the CALPUFF modeling program; all in accordance with Steps Two through Four of the BART Guidelines. 40 CFR part 51 App. Y.

As required by New York's BART regulation, Part 249, the facility conducted a side-by-side comparison and the facility showed that the use of an emission limitation based on the application of the above practices/processes was BART for the Danskammer facility.<sup>6</sup> Dynegey's analysis showed that an emission limit of 0.50 lbs/MMBtu, accomplished through the use of a combination of processes/practices, would achieve a greater impact on regional visibility than the remaining control options. Dynegey then selected the 0.50 lbs/MMBtu as the facility's SO<sub>2</sub> emission limitation. New York reviewed Dynegey's analysis and determined that BART was lowering the SO<sub>2</sub> emission limit from 1.1 lb/MMBtu to 0.50 lb/MMBtu by implementing the combination of processes/practices discussed above.

However, EPA's own analysis of the combination of processes/practices identified by Dynegey and the proposed determination by New York as BART showed that a lower emission limitation than that contained in the state's plan is achievable with this technology. EPA conducted its own evaluation and set a lower estimated emission limitation, 0.09 lb/MMBtu, as a control option. It concluded that "these same control

option strategies can achieve a more stringent SO<sub>2</sub> emission limit than the 0.5 lb/MMBtu limit, on a more cost-effective basis, and therefore result in more visibility improvement." 77 FR 24792, 24813. The 0.09 lb/MMBtu limit was calculated using the fuel costs contained in Dynegey's own fuel costs worksheets. EPA then used Dynegey's own side-by-side comparisons to demonstrate that its proposed 0.09 lb/MMBtu limit was BART for the Danskammer facility.

Since EPA's proposed BART emission limitation was set with reference to processes/practices evaluated using the BART Guidelines, and since processes/practices can be considered as the "best system of emission reduction" pursuant to those same guidelines, EPA's proposed emission limitation is not arbitrary. 40 CFR part 51 App. Y. Therefore EPA is finalizing the SO<sub>2</sub> BART FIP emission limit of 0.09 lb/MMBtu for Danskammer.

*Comment:* Earthjustice commented there is no way to justify EPA's proposed option to approve New York's 0.50 lb/MMBtu SO<sub>2</sub> limit for Danskammer given the ready availability of cost-effective controls.

*Response:* EPA's proposed option that allowed New York to submit additional information to support its higher estimated emission limitation was not improper. New York conducted its BART analysis in accordance with BART Guidelines, but failed to properly support its emission limitation for SO<sub>2</sub> based on the analysis of Dynegey's own fuel cost worksheet. At the time of EPA's April 25, 2012 proposal, New York had not yet issued a final BART permit, so there remained the possibility that additional information could be provided to further support New York's proposed BART determination. If New York had demonstrated that its 0.50 lb/MMBtu limit was accurate by submitting additional material to EPA, it may have been appropriate for EPA to approve New York's proposed BART determination. Regardless, neither New York nor Dynegey submitted additional information specific to the 0.50 lb/MMBtu SO<sub>2</sub> limit. Consequently, EPA is finalizing the SO<sub>2</sub> BART FIP emission limit of 0.09 lb/MMBtu for Danskammer.

*Comment:* Earthjustice commented that other nonair quality environmental impacts and additional power requirements are an improper basis for rejecting wet scrubber or circulating dry scrubber control or Selective Catalytic Reduction (SCR) as BART.

*Response:* Although Dynegey appears to reject certain pollution controls on the basis of nonair quality

<sup>6</sup> See Regulations.gov for EPA-R02-OAR-2012-0296, file marked "final permits," attachment identified as "2012-12-02 Dynegey Final BART Analysis—Redacted Copy."

<sup>5</sup> 40 CFR part 51 App. Y.

environmental impacts and additional energy requirements, EPA went back and reanalyzed Dynegy's analysis. Dynegy did a full five factor analysis and considered the cost effectiveness of controls and the visibility improvement of possible controls. EPA concluded that the controls resulting from Dynegy's analysis were not BART, and adopted much more stringent SO<sub>2</sub> emissions limits and determined the NO<sub>x</sub> emissions limits based on visibility. In EPA's determination of BART, we did not disqualify any SO<sub>2</sub> or NO<sub>x</sub> control strategies because of any energy or nonair quality environmental impacts.

*Comment:* Earthjustice provided extensive comments to support its position that EPA must disapprove New York's NO<sub>x</sub> BART determination for Dynegy's Danskammer Unit 4. Earthjustice contends that New York's and EPA's proposed NO<sub>x</sub> emission limit of 0.12 lb/MMBtu is unattached to any selected BART technology and therefore must be rejected. Earthjustice comments that BART for this facility should be the installation of SCR with a NO<sub>x</sub> emission limit not higher than 0.05 lb/MMBtu (on a 30-day rolling average). Earthjustice states SCR is cost-effective, feasible, and will result in significant visibility benefits.

*Response:* EPA disagrees with Earthjustice's conclusion that the proposed NO<sub>x</sub> emission limit of 0.12 lb/MMBtu and associated controls cannot be considered BART. First, Dynegy and New York evaluated nineteen different controls for BART (including SCR) at Danskammer and, after conducting the 5-factor analysis as required by section 169A(g)(2) of the Act, New York's proposed determination that BART consists of optimization of existing Level II Low NO<sub>x</sub> Burners emission controls, co-firing with natural gas, installation of post-combustion controls, use of alternative coals, or any combination thereof to achieve a NO<sub>x</sub> emission limit of 0.12 lb/MMBtu. Dynegy's proposal committed to meeting a specific emission limit with a combination of specific controls and therefore Earthjustice's contention that

this selection of BART technology is arbitrary is without merit. BART is an emission limit (See 40 CFR 51.301) and Dynegy's BART analysis commits to lowering the NO<sub>x</sub> emission limit from 0.42 lb/MMBtu to 0.12 lb/MMBtu (24-hour average during the ozone season, 30-day average during the non-ozone season) based upon the use of a combination of specific possible controls.

Secondly, Earthjustice comments and provides detailed technical reasons as to why SCR should be considered BART for this facility with a NO<sub>x</sub> emission limit not higher than 0.05 lb/MMBtu on a 30-day rolling average. EPA agrees with Earthjustice that SCR technology is cost effective for the Danskammer facility and it has been demonstrated at numerous coal fired utilities that achieved an emission limit of this magnitude. However, as explained in the following paragraphs, EPA has concluded that the implementation of Earthjustice's recommendation of SCR technology with an emission limit of 0.05 lb/MMBtu provides only minimal visibility improvement (8th high cumulative at the seven Class I areas) when compared to EPA's proposed FIP that BART is an emission limit of 0.12 lb/MMBtu when implementing the combination of controls described above.

Dynegy evaluated SCR plus flue gas recirculation (FGR) using a control efficiency of 91.0% that is equivalent to a NO<sub>x</sub> emission limit of 0.038 lb/MMBtu (note that in EPA's April 25, 2012 proposal, there was a calculation error for this control option and the correct emission limit for NO<sub>x</sub> associated with SCR + FGR is 0.038 lb/MMBtu, not 0.38 lb/MMBtu). As required by section 169A(g)(2) of the Act, one of the five factors to be evaluated for BART is the visibility impact of the emissions from a particular control technology being considered for BART. Dynegy evaluated the visibility benefits at the seven Class I areas impacted by the facility and as noted in Table 6 of EPA's April 25, 2012 proposed rule for New York (77 FR at

24814), the total visibility improvement across the seven Class I areas from SCR + FGR is only better by 0.08 deciviews as compared to Dynegy's proposed combination of controls associated with a BART emission limit of 0.12 lb/MMBtu.<sup>7</sup> As pointed out by Earthjustice, the maximum cumulative visibility improvement is significantly better by 0.534 dv (2.477 dv versus 1.943 dv) for SCR + FGR compared to Dynegy's proposed BART emission limit of 0.12 lb/MMBtu. However, EPA's Guidelines document calls for the use of the 98th percentile (essentially the 8th highest day) rather than the maximum modeled daily impact. These Guidelines further state that while "the use of the 98th percentile of modeled visibility values would appear to exclude roughly 7 days per year from consideration, in our judgment, this approach will effectively capture the sources that contribute to visibility impairment in a Class I area, while minimizing the likelihood that the highest modeled visibility impacts might be caused by unusual meteorology or conservative assumptions in the model." See 70 FR 39104, 39121 (July 6, 2005). Accordingly, EPA used the 98th percentile (8th high) visibility to compare the visibility impacts of different control technologies for the Danskammer facility.

Furthermore, Dynegy's visibility analysis included a summary of the number of days that exceed 1.0 dv, 0.5 dv and 0.1 dv for each NO<sub>x</sub> control strategy at each of the seven impacted Class I areas. This visibility analysis shows only a small improvement in days exceeding the three respective dv thresholds for the SCR + FGR case compared to Dynegy's proposed combination of BART controls with an emission limit of 0.12 lb/MMBtu. The cumulative number of days exceeding each of the dv thresholds for the SCR + FGR (with NO<sub>x</sub> emissions of 0.038 lb/mm BTU) and Dynegy's proposed combination of controls (with NO<sub>x</sub> emissions of 0.12 lb/MMBtu) is summarized in the following table:

Class I area	Difference in the number of days when the visibility impact exceeds 1.0, 0.5, and 0.1 deciviews for each Class I area for two different control strategies								
	1.0 deciview			0.5 deciview			0.1 deciview		
	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies
Lye Brook, VT .....	6	6	0	15	16	1	59	62	3

<sup>7</sup> Difference between 0.651 deciviews and 0.569 deciviews is 0.08 deciviews, 8th high.

Class I area	Difference in the number of days when the visibility impact exceeds 1.0, 0.5, and 0.1 deciviews for each Class I area for two different control strategies								
	1.0 deciview			0.5 deciview			0.1 deciview		
	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies	SCR + FGR	0.12 lb/MMBtu NO <sub>x</sub>	Difference in days between control strategies
Brigantine, NJ .....	1	1	0	7	7	0	56	59	3
Acadia Nat'l Park, ME .....	0	0	0	3	4	1	50	52	2
Presidential Range, NH .....	0	1	1	4	4	0	38	43	5
Great Gulf, NH .....	0	0	0	4	4	0	31	37	6
Otter Creek, WV .....	0	0	0	0	0	0	8	8	0
Dolly Sods, WV .....	0	0	0	0	0	0	10	11	1
<b>Total days .....</b>	<b>7</b>	<b>8</b>	<b>1</b>	<b>33</b>	<b>35</b>	<b>2</b>	<b>252</b>	<b>272</b>	<b>20</b>

Based upon the two visibility analyses described above, EPA concludes that Earthjustice's recommended BART technology, i.e., SCR, with an emission limit of 0.05 lb/MMBtu, would not be expected to provide any significant improvement in visibility at the seven Class I areas over Dynegey's proposed BART implementation of a combination of specific possible controls with an emission limit of 0.12 lb/MMBtu. Therefore, EPA concludes that NO<sub>x</sub> BART for Danskammer Unit 4 is unchanged from our April 25, 2012 proposal, i.e., an emission limit of 0.12 lb/MMBtu by the optimization of existing Level II Low NO<sub>x</sub> Burners emission controls, co-firing with natural gas, installation of post-combustion controls, use of alternative coals, or any combination thereof.

*Comment:* Earthjustice took issue with EPA's inclusion in the Docket of the redacted version of Dynegey's BART analysis and suggested that EPA relies on, but fails to review or provide critical costs and energy impacts and failed to obtain or withheld critical projected capacity factor information.

*Response:* In establishing the Agency's determination of BART for Danskammer Unit 4, EPA relied on the same information from Dynegey's BART analysis that was available to the public. EPA disagrees that we failed to review, provide, or obtain information relevant to our review of the Dynegey BART analysis. EPA's review and analysis focused on Danskammer's potential to emit and did not involve the need for information regarding Dynegey's future, projected utilization rates for the Danskammer facility. EPA determined this information was not relevant to this rulemaking.

*Comment:* Earthjustice commented that EPA failed to establish a historical emissions baseline and that EPA should have corrected Dynegey's use of a ten year useful life of pollution control.

*Response:* EPA agrees that Dynegey did not establish a historical emissions baseline or use a reasonable lifetime for pollution control equipment, but the Agency does not agree that these errors affected EPA's analysis and determination as to appropriate BART limits for the Dynegey facilities. EPA used Dynegey's potential to emit rather than its historical emissions, which resulted in a more conservative approach that increased the estimated cost-effectiveness of controls. As for Earthjustice's comment regarding the ten year useful life of control equipment, Dynegey used a 10-year useful life for the Danskammer emission unit itself. While we agree that a 10-year remaining useful life is not an appropriate assumption unless there is an enforceable commitment to shut down, our review of this alleged discrepancy between a 10-year or a 30-year useful life of the facility did not change our conclusions, since the controls are cost effective either way. EPA did not discuss the remaining useful life in the April 25, 2012 proposal because the controls are cost-effective.

*Comment:* Dynegey supported EPA's proposed compliance date of July 1, 2014 for the Danskammer Unit 4 BART emission limits, EPA's proposed NO<sub>x</sub> and PM BART determinations for the Danskammer and Roseton Units and the form (lbs/MMBtu) of the proposed emission limits for the Danskammer and Roseton units.

*Response:* EPA acknowledges the support for the proposed compliance date, the proposed BART determinations and the proposed form of the BART emission limits. In this action, EPA is finalizing these limits.

*Comment:* New York indicated revisions are being developed to New York's fuel sulfur limitations under Part 225-1 which will likely supersede EPA's SO<sub>2</sub> BART limit for the Roseton

Generating Station, soon after EPA's January 1, 2014 compliance date.

*Response:* EPA fully supports New York's development and adoption of these regulations.

*Comment:* New York disagreed with EPA's determination in the April 25, 2012 proposal that Dynegey incorrectly analyzed visibility impacts at only the maximally-impacted federal Class I area, rather than at all impacted Class I areas. Earthjustice agreed with EPA's determination to consider the cumulative visibility impacts at all impacted Class I areas.

*Response:* In reviewing New York's BART determinations for Dynegey's Roseton and Danskammer Generating Stations, EPA took into account the visibility benefits of requiring controls by considering the improvements at both the most impacted Class I area as well as the improvements at all impacted Class I areas and Dynegey's own conclusions regarding the impacts on visibility from the controls under consideration. With regard to New York's comment that consideration of the BART Guidelines do not require the consideration of visibility benefits at all Class I areas, the state cited to text indicating that consideration of visibility impacts at all impacted Class I areas "might be unwarranted." This language in the BART Guidelines is clearly meant to provide a common sense approach to streamlining a complex and difficult modeling exercise where "an analysis may add a significant resource burden to a State." See 70 FR 39126. While the BART Guidelines indicate that a detailed analysis of the visibility impacts at each area in a cluster of Class I areas may not be necessary, this is not because the visibility impacts at Class I areas other than the most impacted are irrelevant but rather because the visibility benefits at the most impacted Class I area alone may be sufficient to justify the selection

of the most stringent control technology as BART. Where, as here, the benefits of controls have been modeled for a number of surrounding areas and consideration of these benefits is useful in determining the appropriate level of controls, EPA does not agree that these benefits should be ignored.

EPA concludes that it appropriately took into account the visibility impacts across all seven of the impacted Class I areas in deciding to adopt more stringent BART limits. There are many large sources of pollutants that reduce visibility and impact several Class I areas in the northeastern United States. EPA has included, in our review of the multi-factor analysis, the impact these major sources have on more than one Class I area. The smaller impacts from these major sources combine with impacts from other major sources in the northeast to have important impacts on visibility in these protected areas. While EPA is primarily concerned with impacts at the Class I area nearest each major source, EPA encourages cost-effective control strategies that improve visibility across many Class I areas. Reductions in visibility-impairing pollutants from a major facility, with reduced impacts from similarly large sources in other areas and other states, will go a long way toward improving visibility in these areas.

*Comment:* Earthjustice commented that EPA offers no explanation for ruling out a hybrid SCR/SNCR control option and a FGR+SCR control option as BART even though the maximum cumulative visibility improvement across seven affected Class I areas is shown to be 2.244 dv and 2.477 dv, respectively. Earthjustice questions how EPA arrived at this decision for NO<sub>x</sub> when it arrived at a different decision for SO<sub>2</sub>.

*Response:* The visibility improvement cited to by Earthjustice is based on the maximum anticipated visibility improvements at the seven Class I areas impacted by the Danskammer facility. EPA did not base its decision to approve New York's BART determinations on these maximum cumulative visibility improvement values; rather EPA focused on the 8th high (98th percentile) visibility impacts predicted by the visibility modeling in evaluating a particular control option. In this case, the visibility benefits based on consideration of the 8th high visibility impacts for the hybrid SCR/SNCR and FGR+SCR options are far less than 2.0 deciviews. The visibility impacts measured cumulatively across the seven impacted Class I areas based on the 8th high number are 0.689 dv for SCR/SNCR and 0.651 dv for FGR+SCR. EPA concluded that these control options

provide minimal visibility improvement when compared to the BART level of control of 0.12 lbs of NO<sub>x</sub>/MMBtu, with a 8th high cumulative visibility improvement of 0.569 dv. As for SO<sub>2</sub>, in contrast, the visibility improvement associated with the BART limit set by EPA based on the 8th high impacts is 2.174 dv of improvement, as measured across the seven Class I areas.

*Comment:* Earthjustice commented that EPA did not establish any significance thresholds for costs or for visibility improvement in making BART determinations.

*Response:* EPA's BART guidelines in the BART Rule do not require EPA to develop a specific threshold, but rather to evaluate each BART determination on a case-by-case basis for each source. All five factors must be compared to determine the level of control that is BART on a case-by-case basis.

*Comment:* Earthjustice commented that EPA failed to conduct a BART analysis for particulate matter and that BART Guidelines (40 CFR part 51, Appendix Y, section IV.C) require BART limits to be at least as stringent as maximum available control technology (MACT), such as EPA's Mercury and Air Toxics Standards.

*Response:* The comments received do not convince us that our PM BART determination for Danskammer is unreasonable. EPA reviewed Dynegey's BART analysis and New York's proposed BART determination and we agreed that it represents BART. The existing electrostatic precipitator control is 99.98% effective in reducing PM emissions. We consider this level of control to be BART for the Danskammer facility. Neither EPA nor a state is required to set BART based on the limits in a MACT standard. MACT standards are established by EPA for reasons that are much different than the reasons for the limits established in Regional Haze SIPs. Further, that section of the BART Guidelines the comment refers to was not meant to require states to take into account MACT requirements in determining BART, but rather to provide states with the option to streamline the BART analysis for sources subject to the MACT standards by relying on the MACT standards for purposes of BART. In addition, EPA notes that compliance with the particulate matter emission limit in the FIP is based on a one-hour averaging time period, while the MACT is based on a 30 day rolling average. It is accordingly difficult to compare the two limits.

In summary, EPA determined the existing electrostatic precipitator control

represents the BART level of control for PM for this particular facility.

*Comment:* Earthjustice stated that BART determinations must consider filterable PM<sub>10</sub>, PM<sub>2.5</sub> and condensable PM. Earthjustice stated that EPA should have considered more stringent PM emission limits accepted as BART or as best available control technology known as BACT or even the maximum achievable control technology known as MACT. Earthjustice requested EPA to disapprove New York's PM BART determination and adopt a FIP that establishes BART limits for filterable PM<sub>10</sub>, PM<sub>2.5</sub> and condensable PM.

*Response:* EPA disagrees that the PM BART limits should be disapproved. The existing electrostatic precipitator control on the facility and the emission limit from the BART determination are effective in reducing filterable particulates. Condensable particulates will be reduced as a result of the reductions in SO<sub>2</sub> and NO<sub>x</sub> emissions at the facility. Separate emission limits for each form of particulates are not required for BART. EPA also disagrees that the FIP's BART limits should be consistent with BACT or MACT. BART, BACT and MACT are all specific statutorily defined approaches to establishing emissions limitations for sources under different CAA programs.

#### *Reasonable Progress Goals Comments*

*Comment:* Earthjustice commented that EPA's conclusion that New York will achieve its reasonable progress goals is based on an unidentified analysis performed by MANE-VU, resulting in the public's inability to assess the accuracy or reasonableness of MANE-VU's calculations and EPA's statements related to MANE-VU's analysis. Earthjustice recommended that EPA reject its conclusion that New York would achieve its reasonable progress goals since the analysis was not available for public review.

*Response:* EPA disagrees that the MANE-VU analysis was not available for public review and EPA disagrees we should reject our conclusion that New York would achieve its reasonable progress goals. MANE-VU's analysis titled *Documentation of 2018 Emissions from Electric Generating Units in the Eastern United States for MANE-VU's Regional Haze Modeling*, Revised Final Draft, April 2008<sup>8</sup> was originally

<sup>8</sup> The report was finalized as *Documentation of 2018 Emissions from Electric Generating Units in the Eastern United States for MANE-VU's Regional Haze Modeling Final Report*, 16 August 2009, with no changes that affect this analysis. It is available at <http://www.marana.org/technical-center/emissions-inventory/ei-improvement-projects/electricity-generating-units>.

available for public review during the New York rulemaking process for its Regional Haze SIP revision, as well as during many of the other MANE-VU states' rulemaking processes. As EPA included all of the documents associated with New York's Regional Haze SIP revision in the Docket, this MANE-VU document was also available for public review as part of EPA's April 25, 2012 proposal and included in the Docket for this rulemaking as Appendix W in New York's Regional Haze SIP Submittal documents.

Table 9 of Appendix W is the final MANE-VU emission inventory which was modeled to show that implementing the MANE-VU measures would improve visibility at MANE-VU's Class I areas sufficiently to meet the progress goals for 2018 for these areas. For the final emission inventory described in Appendix W, MANE-VU increased the emissions of SO<sub>2</sub> from power plants to account for the effects of EPA's Clean Air Interstate Rule (CAIR) program.<sup>9</sup> Applying the CAIR program to the New York emission inventory increases emissions by 23,142 tons per year of SO<sub>2</sub> from the previous MANE-VU inventory that represented New York's application of the controls agreed to by the MANE-VU states. Since New York is not using EPA's CAIR or subsequent transport rules for BART emission controls on sources in New York, the final MANE-VU emission inventory overestimates the projected emissions for New York by 23,142 tons per year of SO<sub>2</sub>.

New York's existing sulfur in fuel rule does not cover all of the types of fuel oil included in the program agreed to by the MANE-VU states. New York estimates that there is a difference of 17,669 tons per year of SO<sub>2</sub> between the program New York has in place now and full adoption of the sulfur in fuel measure agreed to by the MANE-VU states. The 17,669 tons per year of SO<sub>2</sub> reductions that New York would have if it adopted the entire MANE-VU sulfur in fuel rule is less than the excess 23,142 tons per year of SO<sub>2</sub> projected in the MANE-VU final modeling

<sup>9</sup> The MANE-VU document referenced in the previous footnote explains in Section 5.5 on page 29: " \* \* \* MANE-VU planners recognized that CAIR allows emissions trading, and that reductions at one unit could offset increases at another unit within the CAIR region. Because most states do not restrict trading, MANE-VU decided that emissions should be increased to represent the implementation of the strategy for the 167 stacks within the limits of the CAIR program. Therefore, NESCAUM increased the emissions from states subject to the CAIR cap and trade program. For MANE-VU, 75,809 tons were added back, leaving total regional emissions from the MANE-VU region greater than the original Inter-RPO IPM-based estimate but consistent with state projections."

inventory. These 23,142 tons will not be emitted since New York is not using CAIR for its Regional Haze Plan. Therefore, EPA can approve this portion of New York's Regional Haze Plan because New York's adopted emission reductions meet New York's portion of the emission reductions needed to reach the progress goals set for MANE-VU's Class I areas.

*Comment:* New York disagreed with EPA's discussion of the sulfur reductions achieved by New York's low sulfur fuel strategy and the timing of those reductions. New York commented that sulfur reductions are not required to be implemented by the time EPA takes final action on New York's Regional Haze SIP, but rather by the 2018 Reasonable Progress Goal deadline. New York stated it is in the process of developing regulations to expand the low sulfur fuel oil program to achieve reductions before 2018.

*Response:* EPA agrees sulfur reductions are not required to be implemented by the time EPA takes final action on New York's Regional Haze SIP, but rather as soon as reasonable and, at the latest, by the 2018 Reasonable Progress Goal deadline. However, EPA can only act on the measures that New York has adopted when it submitted its Regional Haze Plan, and cannot act on measures that may be adopted or enacted later. New York needs to adopt all of the measures to be used in its Regional Haze SIP.

New York indicates it is in the process of developing regulations to expand the low sulfur fuel oil program to achieve reductions before 2018. EPA fully supports New York's timely development and adoption of these regulations.

#### General Comments

*Comment:* US Forest Service complimented EPA and New York on the work to date on the Regional Haze program and the BART determinations and supported EPA's BART proposals.

*Response:* EPA agrees New York has successfully addressed the consultation process of the Regional Haze Program with the Federal Land Managers.

*Comment:* New York commented that, at the time of its letter, the fact that forty states do not have approved Regional Haze SIPs highlights the difficulties for states to complete their SIPs under the schedules set by EPA.

*Response:* EPA acknowledges that the deadlines established by Congress in the CAA for the regional haze program have been challenging, but notes that EPA has now either proposed or taken final action on full regional haze programs for all but seven states.

*Comment:* Earthjustice commented that EPA must affirm New York's decision to apply BART and not rely on the Cross State Air Pollution Rule.

*Response:* EPA can affirm that New York conducted case-by-case BART reviews and did not rely on the Cross State Air Pollution Rule based on the fact that New York adopted 6 NYCRR Part 249, a regulation requiring all facilities to conduct and submit a BART analysis to the state, and because New York submitted to EPA source-specific SIP revisions for 18 facilities to implement BART.

*Comment:* Earthjustice commented that with respect to New York, the Cross State Air Pollution Rule (CSAPR) will not achieve greater progress toward national visibility goals.

*Response:* Since New York is not relying on CSAPR, this comment is beyond the scope of this rulemaking.

#### V. What are EPA's conclusions?

EPA has evaluated the proposed revisions to the SIP submitted by the State of New York that address regional haze for the first planning period from 2008 through 2018. EPA is partially approving and partially disapproving the revisions to the SIP, which address the Regional Haze requirements of the Clean Air Act for the first implementation period. This approval includes the Reasonable Progress portion of the plan, New York's source-specific SIP revisions for implementation of BART for 17 BART-subject sources, 6 NYCRR Part 249, "Best Available Retrofit Technology (BART)," effective May 6, 2010, and section 19-0325 of the New York Environmental Conservation Law, effective July 15, 2010, which regulates the sulfur content of fuel oil.

EPA is finalizing amendments to 40 CFR 52.1670(d) "EPA-Approved New York Source-Specific Provisions" to incorporate those sources with new emission limitations or requirements that resulted from the BART determinations that are not part of the applicable SIP.

EPA is promulgating a partial FIP to address the deficiencies in the plan resulting from our partial disapproval of New York's Regional Haze SIP. Specifically, EPA's FIP contains BART determinations and emission limits for the Roseton and Danskammer Generating Stations.

We have fully considered all significant comments on our proposal, and, except as noted in sections II, III and IV above, have concluded that no other changes from our proposal are warranted. Our action is based on an evaluation of New York's SIP submittals

and our FIP relative to the regional haze requirements at 40 CFR 51.300–51.309 and Clean Air Act sections 169A and 169B. All general SIP requirements contained in section 110 of the Act, other provisions of the Act, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. Our authority for action on New York's SIP submittals is based on section 110(k) of the Act. Our authority to promulgate our partial FIP is based on section 110(c) of the Act.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action will promulgate emission requirements for two facilities and is therefore not a rule of general applicability. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a “collection of information” is defined as a requirement for “answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*” 44 U.S.C. 3502(3)(A). Because the FIP applies to just two facilities, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR Part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The Regional Haze FIP that EPA is finalizing for purposes of the regional haze program consists of imposing Federal controls to meet the BART requirement for NO<sub>x</sub>, SO<sub>2</sub> and PM<sub>2.5</sub> from one facility and emissions of SO<sub>2</sub> from another facility in New York. The net result of these two FIP actions is that EPA is promulgating emission controls on selected units at only two sources. The sources in question are each large electric generating plants that are not owned by small entities, and therefore are not small entities. The partial approval of the SIP merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. *See Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985).

### D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. It is a rule of particular applicability that affects only two facilities in the State of

New York. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule only applies to two facilities in the State of New York.

### E. Executive Order 13132 Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action addresses the State not fully meeting its obligation to adopt a SIP that meets the regional haze requirements under the CAA. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with the state government in developing this action. A summary of the concerns raised during the comment period and EPA's response to those concerns is provided in section IV of this preamble.

### F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the action EPA is taking neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. It will not have substantial direct effects on tribal government. Thus, Executive Order 13175 does not apply to this action.

### G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this rule will limit emissions, the rule will have a beneficial effect on children's health by reducing air pollution.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Today’s action does not require the public to perform activities conducive to the use of voluntary consensus standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority

populations and low-income populations in the United States.

We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule limits emissions of NO<sub>x</sub>, SO<sub>2</sub> and PM<sub>2.5</sub> from one facility and emissions SO<sub>2</sub> from another facility in New York. The partial approval of the SIP merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S 804(3). EPA is not required to submit a rule report regarding today’s action under section 801 because this is a rule of particular applicability.

*L. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 2012. Pursuant to *Approval and Promulgation of Air Quality Implementation Plans; State of New York; Regional Haze State Implementation Plan and Federal*

*Implementation Plan [EPA–R02–OAR–2012–0296]* CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d) as it promulgates a FIP under CAA section 110(c). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 16, 2012.

**Lisa P. Jackson,**  
*Administrator.*

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. 7401–7671q.

**Subpart HH—New York**

- 2. Section 52.1670 is amended by:
  - a. In paragraph (c), revising the table heading and adding a new entry for Title 6, Part 249, in numeric order and adding new subheading “Environmental Conservation Law” and table entry at end of table (c); and
  - b. In paragraph (d) by adding new entries to the end of table
  - c. In paragraph (e) by adding new entries to the end of table.

The additions and revisions reads as follows:

**§ 52.1670 Identification of plan.**  
\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS**

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
* * *	* * *	* * *	* * *
Part 249, Best Available Retrofit Technology (BART).	5/6/10	8/28/12 [Insert page number where the document begins].	

## EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS—Continued

New York State regulation	State effective date	Latest EPA approval date	Comments
* * * Environmental Conservation Law Section 19-0325 .....	7/15/10	8/28/12 [Insert page number where the document begins].	* * *

(d) \* \* \*

## EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS

Name of source	Identifier/emission point	State effective/approval date	EPA approval date	Explanation
* * * ALCOA Massena Operations (West Plant).	* * * Potline S-00001, Baking furnace S-00002, Package Boilers B-00001.	* * * Permit ID 6-4058-00003, effective 3/20/12.	* * * 8/28/12 [Insert page number where the document begins].	* * * Part 249 BART.
Arthur Kill Generating Station, NRG.	Boiler 30 .....	Permit ID 2-6403-00014, effective 3/20/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Bowline Generating Station, GenOn.	Boilers 1 and 2 .....	Permit ID 3-3922-00003, effective 6/28/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Con Edison 59th Street Station.	Steam Boilers 114 and 115.	Permit ID 2-6202-00032, Effective 3/20/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
EF Barrett Power Station, NG.	Boiler 2 .....	Permit ID 1-2820-00553, effective 3/27/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
International Paper Ticonderoga Mill.	Power Boiler and Recovery Furnace.	Permit ID 5-1548-00008, effective 3/19/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Kodak Operations at Eastman Business Park, Kodak.	Boilers 41, 42 and 43 .....	Permit ID 8-2614-00205, effective 5/25/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Lafarge Building Materials	Kilns 1 and 2 .....	Permit ID 4-0124-00001 effective 7/19/11.	8/28/12 [Insert page number where the document begins].	Condition 12-14.
Lehigh Northeast Cement, Lehigh Cement.	Kiln and Clinker cooler .....	Permit ID 5-5205-00013, effective 7/5/12.	8/28/12 [Insert page number where the document begins].	Part 220 and Part 249 BART.
Northport Power Station, NG.	Boilers 1, 2, 3, and 4 .....	Permit ID 1-4726-00130, effective 3/27/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Oswego Harbor Power, NRG.	Boilers 5 and 6 .....	Permit ID 7-3512-00030, effective 5/16/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Owens-Corning Insulating Systems Feura Bush, Owens Corning.	EU2, EU3, EU12, EU13, and EU14.	Permit ID 4-0122-00004 effective 5/18/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Ravenswood Generating Station, TC.	Boilers 10, 20, 30 .....	Permit ID 2-6304-00024, effective 4/6/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Ravenswood Steam Plant, Con Edison.	Boiler 2 .....	Permit ID 2-6304-01378 effective 3/20/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.
Roseton Generating Station—Dynergy.	Boilers 1 and 2 .....	Permit ID 3-3346-00075 effective 11/02/11.	8/28/12 [Insert page number where the document begins].	Excluding the SO <sub>2</sub> BART emissions limits for Boilers 1 and 2 and corresponding monitoring, recordkeeping, and reporting requirements, which EPA disapproved.
Samuel A Carlson Generating Station, James town Board of Public Utilities.	Boiler 12 .....	Permit ID 9-0608-00053 effective 2/8/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.

EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS—Continued

Name of source	Identifier/emission point	State effective/approval date	EPA approval date	Explanation
Syracuse Energy Corporation [GDF Suez].	Boiler 1 .....	Permit Id 7-3132-00052 effective 5/24/12.	8/28/12 [Insert page number where the document begins].	Part 249 BART.

(e) \* \* \*

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or non-attainment area	New York submittal date	EPA approval date	Explanation
Implementation Plan for Regional Haze.	Statewide .....	3/15/00	8/28/12 [Insert page number where the document begins].	The plan is approved except for the BART determinations for Danskammer Generating Station Unit 4 and Roseton Generating Station Units 1 and 2. See 40 CFR 52.1686.
Regional Haze plan—Fuel Oil Sulfur Content.	Statewide .....	4/16/12	8/28/12 [Insert page number where the document begins].	
Regional Haze Plan—BART Permit modifications.	Statewide .....	4/16/12	8/28/12 [Insert page number where the document begins].	
Regional Haze Plan—BART Permit modifications.	Statewide .....	7/2/12	8/28/12 [Insert page number where the document begins].	

■ 3. Section 52.1686 is added as follows:  
**§ 52.1686 Federal Implementation Plan for Regional Haze.**

(a) *Applicability.* This section applies to each owner and operator of the following electric generating units (EGUs) in the State of New York: Danskammer Generating Station, Unit 4; and Roseton Generating Station, Units 1 and 2;

(b) *Definitions.* Terms not defined below shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this section:

*Boiler operating day* means a 24-hour period between 12 midnight and the

following midnight during which any fuel is combusted at any time in the EGU, boiler or emission unit. It is not necessary for fuel to be combusted for the entire 24-hour period.

*Continuous emission monitoring system* or *CEMS* means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO<sub>2</sub>, NO<sub>x</sub>, and PM emissions, other pollutant emissions, diluent, or stack gas volumetric flow rate.

*SO<sub>2</sub>* means sulfur dioxide.

*NO<sub>x</sub>* means nitrogen oxides.

*PM* means particulate matter

*Owner/operator* means any person who owns, leases, operates, controls, or supervises an EGU or boiler identified in paragraph (a) of this section.

*Ozone Season* means the time period from May 1 through September 30 of each year.

*Unit* means any of the EGUs or boilers identified in paragraph (a) of this section.

(c) *Emissions limitations*—(1) The owners/operators subject to this section shall not emit or cause to be emitted SO<sub>2</sub>, NO<sub>x</sub>, and PM in excess of the following limitations, averaged over a rolling 30-day period unless otherwise indicated below:

Facilities	BART unit	BART controls/limits		
		NO <sub>x</sub>	SO <sub>2</sub>	PM
Danskammer Generating Station—Dynegy.	4	0.12 lb/MMBtu 24 hr avg ozone season, 30 day avg rest of yr Compliance 7/1/2014.	0.09 lb/MMBtu 24 hr avg Compliance 7/1/2014.	0.06 lb/MMBtu 1 hr avg Compliance 7/1/2014.
Roseton Generating Station—Dynegy.	1 & 2	.....	0.55 lb/MMBtu 24 hr avg .....	

(2) These emission limitations shall apply at all times, including startups,

shutdowns, emergencies, and malfunctions.

(d) *Compliance date.* The owners and operators subject to this section shall comply with the emissions limitations

and other requirements of this section by January 1, 2014 unless otherwise indicated in paragraph (c) of this section.

(e) *Compliance determination using CEMS*—(1) *CEMS*. At all times after the compliance date specified in paragraph (d) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure SO<sub>2</sub>, NO<sub>x</sub>, and PM, diluent, and stack gas volumetric flow rate from each unit. The CEMS shall be used to determine compliance with the emission limitations in paragraph (c) of this section for each unit.

(2) *Method*. (i) For any hour in which fuel is combusted in a unit, the owner/operator of each unit shall calculate the hourly average SO<sub>2</sub>, NO<sub>x</sub>, and PM concentration in lb/MMBtu at the CEMS in accordance with the requirements of 40 CFR part 75. At the end of each boiler operating day, the owner/operator shall calculate and record a new average emission rate, consistent with paragraph (c) averaging period, in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the current boiler operating day.

(ii) An hourly average SO<sub>2</sub>, NO<sub>x</sub>, or PM emission rate in lb/MMBtu is valid only if the minimum number of data points, as specified in 40 CFR part 75, is acquired by the SO<sub>2</sub>, NO<sub>x</sub>, or PM pollutant concentration monitor and the diluent monitor (O<sub>2</sub> or CO<sub>2</sub>).

(iii) Data reported to meet the requirements of this section shall not include data substituted using the missing data substitution procedures of subpart D of 40 CFR part 75, nor shall the data have been bias adjusted according to the procedures of 40 CFR part 75.

(f) *Compliance determination using fuel certification*—The owner or operator of each affected facility subject to a federally enforceable requirement limiting the fuel sulfur content may use fuel supplier certification to demonstrate compliance. Records of fuel supplier certification, as described under paragraphs (f)(1), (2), (3), and (4) of this section, as applicable, shall be maintained and reports submitted as required under paragraph (h). In addition to records of fuel supplier certifications, the report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the reporting period.

Fuel supplier certification shall include the following information:

(1) For distillate oil:  
(i) The name of the oil supplier;  
(ii) A statement from the oil supplier that the oil complies with the specifications under the definition of distillate oil in § 60.41c; and  
(iii) The sulfur content or maximum sulfur content of the oil.

(2) For residual oil:  
(i) The name of the oil supplier;  
(ii) The location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the affected facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location;

(iii) The sulfur content of the oil from which the shipment came (or of the shipment itself); and  
(iv) The method used to determine the sulfur content of the oil.

(3) For coal:  
(i) The name of the coal supplier;  
(ii) The location of the coal when the sample was collected for analysis to determine the properties of the coal, specifically including whether the coal was sampled as delivered to the affected facility or whether the sample was collected from coal in storage at the mine, at a coal preparation plant, at a coal supplier's facility, or at another location. The certification shall include the name of the coal mine (and coal seam), coal storage facility, or coal preparation plant (where the sample was collected);  
(iii) The results of the analysis of the coal from which the shipment came (or of the shipment itself) including the sulfur content, moisture content, ash content, and heat content; and  
(iv) The methods used to determine the properties of the coal.

(4) For other fuels:  
(i) The name of the supplier of the fuel;  
(ii) The potential sulfur emissions rate or maximum potential sulfur emissions rate of the fuel in nanograms per joule (ng/J) heat input; and  
(iii) The method used to determine the potential sulfur emissions rate of the fuel.

(g) *Compliance determination with an annual emission limit*—The owner or operator of each affected facility subject to a federally enforceable requirement limiting the annual emissions shall calculate the annual emissions individually for each fuel combusted, as applicable. The annual emission limitation is determined on a 12-month rolling average basis with a new annual emission limitation calculated at the end of the calendar month, unless a

different reporting period is identified in paragraph (c).

(h) *Recordkeeping*. Owner/operator shall maintain the following records for at least five years:

(1) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(2) All fuel supplier certifications and information identified in paragraph (f)(1), (2), (3), or (4) of this section, as applicable.

(3) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR Part 75.

(4) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(5) Any other records required by 40 CFR part 75.

(i) *Reporting*. All reports under this section shall be submitted to the Director, Division of Enforcement and Compliance Assistance, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866.

(1) Owner/operator shall submit quarterly excess emissions reports no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limits specified in paragraph (c) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(2) Owner/operator shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, any CEMS repairs or adjustments, and results of any CEMS performance tests required by 40 CFR part 75 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(3) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the report.

(4) Owner/operator shall submit semi-annual fuel certification reports no later

than the 30th day following the end of each six month period.

(5) Owner/operator shall submit an annual emissions limitation calculation report no later than the 30th day following the end of the calendar year or quarter if a rolling average is required in paragraph (c).

(j) *Notifications.* (1) Owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the emission limits in paragraph (c) of this section.

(2) Owner/operator shall submit semi-annual progress reports on construction of any such equipment.

(3) Owner/operator shall submit notification of initial startup of any such equipment.

(k) *Equipment operation.* At all times, owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

(l) *Credible Evidence.* Nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with requirements of this section if the appropriate performance or compliance test procedures or method had been performed.

[FR Doc. 2012-21056 Filed 8-27-12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2010-0391; FRL-9719-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Plan for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware 1997 Fine Particulate Matter Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania on April 12, 2010, as amended on August 3, 2012. The SIP revision demonstrates attainment of the 1997 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA-NJ-DE) nonattainment

area (Philadelphia Area). This Pennsylvania SIP revision (herein called the "attainment plan") includes the Philadelphia Area's attainment demonstration and the motor vehicle emission budgets (MVEBs) used for transportation conformity purposes in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania. The attainment plan also includes a base year emissions inventory and contingency measures. On August 3, 2012, Pennsylvania withdrew the analysis of reasonably available control measures and reasonably available control technology (RACM/RACT) from the attainment plan because the requirement was suspended by a clean data determination for the Philadelphia Area. Furthermore, EPA has determined that a reasonable further progress (RFP) plan is not required because Pennsylvania projected that attainment of the 1997 PM<sub>2.5</sub> NAAQS occurred in the Philadelphia Area by the attainment date of April 2010. This action is being taken in accordance with the Clean Air Act (CAA) and the Clean Air Fine Particulate Implementation Rule (PM<sub>2.5</sub> Implementation Rule) published on April 25, 2007.

**DATES:** This final rule is effective on September 27, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0391. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not 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](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by email at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Background

On November 2, 2011 (76 FR 67640), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of the Pennsylvania 1997 annual PM<sub>2.5</sub> NAAQS attainment plan for the Philadelphia Area.

On November 27, 2009 (74 FR 62251), EPA published findings of failure to submit a SIP revision that demonstrates attainment of the 1997 PM<sub>2.5</sub> NAAQS for the Philadelphia Area. On April 12, 2010, the Commonwealth of Pennsylvania through the Department of Environmental Protection (PADEP) submitted a formal SIP revision and on June 19, 2010, EPA determined that this SIP revision met the requirements for completeness found in section 110(k)(1) of the CAA. On May 16, 2012 (77 FR 28782), EPA published a clean data determination and determination of attainment of the 1997 annual PM<sub>2.5</sub> NAAQS by the attainment date of April 5, 2010.

On May 12, 2005 (76 FR 70093), EPA published the Clean Air Interstate Rule (CAIR) that addresses the interstate transport requirements of the CAA with respect to the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS. As originally promulgated, CAIR required significant reductions in emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) to limit the interstate transport of these pollutants. In 2008, however, the DC Circuit Court of Appeals ("the Court") remanded CAIR back to EPA. *See North Carolina v. EPA*, 550 F.3d 1176. The Court found CAIR to be inconsistent with the requirements of the CAA, *North Carolina v. EPA*, 531 F.3d 896 (*D.C. Cir. 2008*), but ultimately remanded the rule to EPA without vacatur because it found that "allowing CAIR to remain in effect until it is replaced by a rule consistent with [the Court's] opinion would at least temporarily preserve the environmental values covered by CAIR." *See North Carolina v. EPA*, 550 F.3d at 1178. CAIR thus remained in place following the remand, and was in place and enforceable through the April 5, 2010 attainment date. In response to the Court's decision, EPA has issued a new rule to address interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the Eastern United States (i.e., the Transport Rule, also known as the Cross-State Air Pollution Rule). *See* 76 FR 48208, August 8, 2011. In the Transport Rule, EPA finalized regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR Federal Implementation Plans (FIPs) for control

periods in 2012 and beyond. See 76 FR 48322.

On December 30, 2011, the Court issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the Court stayed the Transport Rule pending the Court's resolution of the petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11–1302 and consolidated cases). The Court also indicated that EPA is expected to continue to administer the CAIR in the interim until the Court rules on the petitions for review of the Transport Rule.

EPA does not believe that the circumstances set forth above preclude EPA from approving the April 12, 2012 Pennsylvania attainment plan as amended on August 3, 2012 for the Philadelphia Area. While the monitoring data that show the Philadelphia Area attained the 1997 annual PM<sub>2.5</sub> NAAQS by the April 2010 attainment deadline was impacted by CAIR, CAIR was in place and enforceable through the 2010 attainment date that is relevant to acting on this attainment plan. Moreover, EPA's analysis conducted for the Transport Rule demonstrates that the Philadelphia Area would be able to attain the 1997 annual PM<sub>2.5</sub> NAAQS even in the absence of either CAIR or the Transport Rule. See Appendix B to the Air Quality Modeling Final Rule Technical Support Document for the Transport Rule.

Most importantly, EPA notes that this action is approving an attainment plan that demonstrated that the Philadelphia Area would attain the 1997 annual PM<sub>2.5</sub> NAAQS by 2010, which it did. As of 2010, CAIR was an enforceable control measure applicable to affected sources in the area, as well as sources throughout the Eastern United States. As such, the fact that CAIR is now in place only temporarily as a result of the judicial remand of CAIR does not detract from our conclusion that the attainment plan should be approved. Further, the fact that the Court has stayed the implementation of the Transport Rule at this time is not relevant because, as noted above, EPA's modeling for the Transport Rule demonstrates the Philadelphia Area would be able to attain the 1997 annual PM<sub>2.5</sub> even in the absence of CAIR and the Transport Rule. Finally, the Transport Rule, as promulgated, only addresses emissions in 2012 and beyond. As such, neither the Transport Rule itself, nor the judicial stay of the Transport Rule, is relevant to the question addressed in this proposal

notice. The purpose of this action is to determine whether the attainment plan submitted by Pennsylvania is sufficient to bring the Philadelphia Area into attainment by the April 2010 attainment date, a date before the Transport Rule was even promulgated. For these reasons, neither the current status of CAIR nor the current status of the Transport Rule affects any of the criteria for proposed approval of this SIP revision.

## II. Summary of SIP Revision

Pennsylvania's SIP revision demonstrates attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for the Philadelphia Area. This April 12, 2010 attainment plan as amended on August 3, 2012, includes Pennsylvania's attainment demonstration, MVEBs used for transportation conformity purposes for the five counties in the Philadelphia Area, a base year emissions inventory, and contingency measures. A RFP plan is not required under the applicable implementation rule because the Philadelphia Area demonstrated that attainment of the 1997 annual PM<sub>2.5</sub> NAAQS occurred by the attainment date of April 2010. See 40 CFR 51.1009(b) and 72 FR 20633 (April 25, 2007). In addition, because EPA determined on May 16, 2012 (77 FR 28782) that the Philadelphia Area attained by its required attainment date in accordance with section 179(c)(9) of the CAA, no contingency measures for failure to attain by this date need to be implemented, and further EPA action respecting nonattainment contingency measures is unnecessary. Furthermore, as set forth in the PM<sub>2.5</sub> Implementation Rule, areas that attained the NAAQS by the attainment date are considered to have satisfied the requirement to show RFP, and as such do not need to implement contingency measures to make further progress to attainment. EPA has determined that the Philadelphia Area attained by the attainment date, therefore the contingency measures submitted by Pennsylvania are no longer necessary for the Philadelphia Area to meet RFP requirements or to attain the 1997 annual PM<sub>2.5</sub> NAAQS by the attainment date.

On August 3, 2012, Michael L. Krancer, Secretary of PADEP sent a letter to Shawn M. Garvin, Regional Administrator of EPA Region III withdrawing the analysis of RACM/RACT which had been included in the April 12, 2010 attainment plan since the requirement for the RACM/RACT analysis was suspended by the May 16, 2012 (77 FR 28782) clean data determination pursuant to 40 CFR

51.1004(c). Specifically, PADEP withdrew section IV.B. in its entirety, pages 29–31 in part, and Appendix G in its entirety.

Other specific requirements of the 1997 annual PM<sub>2.5</sub> NAAQS attainment plan for the Philadelphia Area and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On December 2, 2011, EPA received comments on the November 2, 2011 NPR. A summary of those comments and EPA's responses are provided in section III of this document.

## III. Summary of Public Comments and EPA Responses

*Comment:* A commenter requests clarification with regard to the procedures for collecting emissions inventory data from the Port of Philadelphia and the accuracy of the data applied in this attainment plan.

*Response:* Emissions from the Port of Philadelphia are not considered "facility or point" emissions but rather treated as part of the nonroad data category. Nonroad data category consists of off-highway categories—such as cranes, yard trucks, locomotives and marine vessels. Therefore, emissions in the inventory are aggregated to the county level, separated by source category. Specifically, port emissions are comprised of marine vessels and land-based sources (such as cargo handling equipment) at ports. Activity data for land-based sources collected from various sources are used as inputs to EPA's NONROAD model. Marine vessels' emissions are calculated outside of the NONROAD model because the NONROAD model does not include marine vessel emissions.

EPA reviewed the methodology that PADEP used to estimate marine vessel emissions and found that proper guidance was followed pertaining to gathering characteristics of the port that included the types of vessels, the shipping traffic, arrival information, and any limitations on the data gathered. EPA verified that the marine vessels' emissions were accounted for in the supporting spreadsheets provided for nonroad emission estimates. EPA also verified that land-based sources for cargo handling equipment, such as terminal tractors, cranes, container handlers and forklifts, were accounted for in the nonroad spreadsheets by county provided by PADEP.

*Comment:* A commenter requests clarification and additional information with regard to Pennsylvania's enforcement of the Diesel-Powered Commercial Motor Vehicle Idling Act (Act 124—anti-idling requirements) and

suggests that the attainment plan should offer more detailed “estimations of emission reductions resulting from Act 124.”

*Response:* Additional information is publicly available and may be found at <http://www.dep.state.pa.us/dep/deputate/airwaste/aq/cars/idling.htm>. This Internet site directs viewers to contact the PADEP’s Bureau of Air Quality for additional information pertaining to Act 124. Additionally, while the commenter suggests that the attainment plan should offer more detailed “estimations of emission reductions resulting from Act 124,” Pennsylvania does not rely on any emission reductions resulting from the enforcement of Act 124 in order to demonstrate attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. However, Pennsylvania does include Act 124 as a contingency measure. Since EPA has determined that the Philadelphia Area attained by its required attainment date, in accordance with section 172(c)(9) of the CAA, no contingency measures for failure to attain by this date or make reasonable further progress need to be implemented at this time. Therefore, the attainment plan provides sufficient estimations of emission reductions resulting from Act 124.

#### IV. Final Action

EPA is approving Pennsylvania’s April 12, 2010 attainment plan as amended on August 3, 2012 for the 1997 annual PM<sub>2.5</sub> NAAQS for the Philadelphia Area as a revision to the Pennsylvania SIP. EPA has determined that the SIP revision meets the applicable requirements of the CAA, as described in the PM<sub>2.5</sub> Implementation Rule. Specifically, EPA is approving only Pennsylvania’s attainment demonstration, associated MVEBs used for transportation conformity purposes, the base year emissions inventory, and contingency measures. PADEP withdrew the RACM/RACT analysis section of the attainment plan as amended on August 3, 2012 because the requirement for RACM/RACT was suspended by the May 16, 2012 clean data determination pursuant to 40 CFR 51.1004(c). Furthermore, EPA has determined that the requirement for RFP plan is satisfied because Pennsylvania demonstrated attainment of the 1997 annual PM<sub>2.5</sub> NAAQS in the Philadelphia Area by April 5, 2010.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission

that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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.

##### B. Submission to Congress and the Comptroller General

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).

##### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 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. This action pertaining to the Pennsylvania 1997 annual PM<sub>2.5</sub> NAAQS attainment plan for the Philadelphia Area, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2) of the CAA.)

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 9, 2012.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

##### PART 52—[AMENDED]

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

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

##### Subpart NN—Pennsylvania

- 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for the 1997 PM<sub>2.5</sub> NAAQS attainment plan at the end of the table to read as follows:

##### § 52.2020 Identification of plan.

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
1997 PM <sub>2.5</sub> NAAQS Attainment Demonstration, 2002 Base Year Emissions Inventory, Contingency Measures and Motor Vehicle Emission Budgets for 2009.	Pennsylvania portion of the Philadelphia-Wilmington, PA-NJ-DE Nonattainment Area.	4/12/10, 8/3/12	8/28/12	[Insert page number where the document begins].

[FR Doc. 2012-21046 Filed 8-27-12; 8:45 am]  
BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 5b

[Docket Number NIH-2011-0001]

#### Privacy Act; Implementation

**AGENCY:** Department of Health and Human Services.

**ACTION:** Direct Final rule.

**SUMMARY:** The Department of Health and Human Services (HHS or Department), through the National Institutes of Health (NIH), is implementing a new system of records, 09-25-0223, "NIH Records Related to Research Misconduct Proceedings, HHS/NIH." HHS is exempting this system of records from certain provisions of the Privacy Act to protect the integrity of NIH research misconduct proceedings and to protect the identity of confidential sources in such proceedings. HHS is issuing a direct final rule for this action because the agency expects that there will be no significant adverse comment on this rule. Elsewhere in this issue of the **Federal Register**, HHS is publishing a companion proposed rule under the agency's usual procedure for notice-and-comment rulemaking to provide a procedural framework to finalize the rule in the event the agency receives any significant comments and withdraws this direct final rule. The companion proposed rule and this direct final rule are substantively identical.

**DATES:** This rule is effective January 10, 2013. Submit either electronic or written comments by November 13, 2012. If HHS/NIH receives no significant adverse comments within the specified comment period, the agency will publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the agency will publish a document in the **Federal**

**Register** withdrawing this direct final rule before its effective date.

**ADDRESSES:** You may submit comments, identified by [Docket No(s).], by any of the following methods:

#### Electronic Submissions

Submit electronic comments in the following way:

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

#### Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301-402-0169.
- *Mail:* Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852-7669.

To ensure more timely processing of comments, HHS/NIH is no longer accepting comments submitted to the agency by email. HHS/NIH encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

*Instructions:* All submissions received must include the agency name and Docket No. for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and follow the instructions provided for conducting a search, using the docket number(s) found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852-7669, telephone 301-496-4607, fax 301-402-0169, email [jm40z@nih.gov](mailto:jm40z@nih.gov).

**SUPPLEMENTARY INFORMATION:** NIH is implementing a new system of records called, "NIH Records Related to Research Misconduct Proceedings" (09-25-0223). This system of records is part of NIH's implementation of its responsibilities under the Public Health Service (PHS) Policies on Research Misconduct, 42 CFR part 93. The system notice applies to alleged or actual research misconduct involving research: (1) Carried out in NIH facilities by any person; (2) funded by the NIH Intramural Research Program (IRP) in any location; or (3) undertaken by an NIH employee or trainee as part of his or her official NIH duties or NIH training activities, regardless of location. A person who, at the time of the alleged or actual research misconduct, was employed by, was an agent of, or was affiliated by contract, agreement, or other arrangement with NIH, is covered by the system if, for example, he or she is involved in: (1) NIH- or PHS-supported biomedical or behavioral research; (2) NIH- or PHS-supported biomedical or behavioral research training programs; (3) NIH- or PHS-supported activities that are related to biomedical or behavioral research or research training, such as the operation of tissue and data banks and the dissemination of research information; (4) plagiarism of research records produced in the course of NIH- or PHS-supported research, research training or activities related to that research or research training; or (5) an application or proposal for NIH or PHS support for biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information (regardless of whether it is approved or funded).

The term "research misconduct" is defined at 42 CFR 93.103 to mean "fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results." The general policy of the PHS Policies on Research Misconduct is that "Research misconduct involving PHS support is contrary to the interests of the PHS and the Federal government and to

the health and safety of the public, to the integrity of research, and to the conservation of public funds.” 42 CFR 93.100(a). The PHS Policies on Research Misconduct provide for a number of HHS administrative actions that can be taken in response to a research misconduct proceeding, such as an adverse personnel action against a federal employee, the suspension of a contract, or debarment. 42 CFR 93.407. In addition, pursuant to 42 CFR 93.318 and 93.401, NIH shall at any time during a research misconduct proceeding notify the HHS Office of Research Integrity (ORI) immediately to ensure that NIH’s Office of Management Assessment, HHS’ Office of Inspector General, the Department of Justice, or other appropriate law enforcement agencies are notified and consulted, if there is a reasonable indication of possible violations of civil or criminal law that may involve such offices.

NIH’s system of records is modeled after the system of records maintained by ORI, entitled “HHS Records Related to Research Misconduct Proceedings, HHS/OS/ORI” System No. 09–37–0021 (59 FR 36717, July 19, 1994; revised most recently at 74 FR 44847, Aug. 31, 2009).

NIH’s records related to research misconduct proceedings are located in the Office of Intramural Research in NIH’s Office of the Director. NIH is updating its organization and operation of these records, to be exempt from Privacy Act requirements, as provided in this direct final rule and in a new “System of Records Notice” which NIH is publishing in the **Federal Register** for public comment contemporaneously with or soon after publication of this direct final rule.

Under the Privacy Act (5 U.S.C. 552a), individuals have a right of access to information pertaining to them which is contained in a system of records. At the same time, the Act permits certain types of systems to be exempt from some of the Privacy Act requirements, including the access requirement. For example, section 552a(k)(2) allows agency heads to exempt from certain Privacy Act provisions a system of records containing investigatory material compiled for law enforcement purposes. This exemption’s effect on the access requirement is qualified in that if the maintenance of the material results in the denial of any right, privilege, or benefit that the individual would be otherwise entitled to by Federal law, the individual must be granted access to the material unless the access would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. In

addition, section 552a(k)(5) permits an agency to exempt investigatory material from certain Privacy Act provisions where such material is compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

As stated above, NIH may take administrative action in response to a research misconduct proceeding and, where a civil or criminal fraud may have taken place, NIH may refer the matter to the appropriate investigative body. As such, NIH’s records related to research misconduct proceedings are compiled for law enforcement purposes, and the subsection (k)(2) exemption is applicable to this system of record. Moreover, where records related to research misconduct proceedings are compiled solely for the purpose of making determinations as to the suitability for appointment as special government employees or eligibility for Federal contracts from PHS agencies, the subsection (k)(5) exemption is applicable.

Exempting the system from Privacy Act provisions pertaining to providing an accounting of disclosures, access and amendment, notification, and procedures and rules is necessary to maintain the integrity of the research misconduct proceedings and to ensure that the NIH’s efforts to obtain accurate and objective information will not be hindered.

Accordingly, HHS/NIH is exempting this system under subsections (k)(2) and (k)(5) of the Privacy Act from the accounting, access, and amendment, notification and procedures and rules provisions of the Privacy Act (paragraphs (c)(3), (d)(1)–(4), (e)(4)(G) and (H), and (f)) for the reasons stated below. However, consideration will be given to requests for notification, access, and amendment that are addressed to the System Manager. The specific rationale for exempting the system from each of these provisions is as follows:

- Subsection (c)(3). An exemption from the requirement to provide an accounting of disclosures is needed during the pendency of a research misconduct proceeding. Release of an accounting of disclosures to an individual who is the subject of a pending research misconduct assessment, inquiry or investigation could prematurely reveal the nature and

scope of the assessment, inquiry or investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding.

- Subsection (d)(1). An exemption from the access requirement is needed both during and after a research misconduct proceeding, to avoid revealing the identity of any source who was expressly promised confidentiality. Only material that would reveal a confidential source will be exempt from access. Protecting the identity of a source is necessary when the source is unwilling to come forward and report possible research misconduct because of fear of retaliation (e.g., from an employee or co-worker).

- Subsections (d)(2) through (d)(4). An exemption from the amendment provisions is necessary while one or more related research misconduct proceedings are pending. Allowing amendment of investigative records in a pending proceeding could interfere with that proceeding; even after that proceeding is concluded, an amendment could interfere with other pending or prospective research misconduct proceedings, or could significantly delay inquiries or investigations in an attempt to resolve questions of accuracy, relevance, timeliness, and completeness.

- Subsections (e)(4)(G) and (H). An exemption from the notification provisions is necessary during the pendency of a research misconduct proceeding, because notifying an individual who is the subject of an assessment, inquiry, or investigation of the fact of such proceedings could prematurely reveal the nature and scope of the proceedings in a manner that could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding.

- Subsection (f). An exemption from this requirement to establish procedures for notification, access to records, amendment of records, or appeals of denials of access to records, is necessary because the procedures would serve no purpose in light of the other exemptions, to the extent that those exemptions apply.

As stated above, NIH’s system of records is modeled after the system of records maintained by HHS’ Office of Research Integrity (ORI). ORI has exempted these records under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, accounting, access, and amendment provisions of the Privacy Act, to ensure

that these investigative files will not be disclosed inappropriately [59 FR 36717 (July 19, 1994)]. Likewise, NIH believes that exempting the new system, "NIH Records Related to Research Misconduct Proceedings, HHS/NIH," from the Privacy Act provisions is essential to ensure that material in NIH's files related to research misconduct proceedings is not disclosed inappropriately. Except for information that would reveal the identity of a source who was expressly promised confidentiality, the access exemption will not prohibit HHS/NIH from granting respondents' access requests consistent with the PHS Policies on Research Misconduct (42 CFR Part 93), including in those cases in which a finding of research misconduct has become final and an administrative action has been imposed.

#### Analysis of Impacts

HHS/NIH has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule imposes no duties or obligations on small entities, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is \$136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. NIH does not expect this final rule to result in any 1-year

expenditure that would meet or exceed this amount.

#### List of Subjects in 45 CFR Part 5b

Privacy.

For the reasons set out in the preamble, the Department's Privacy Act Regulations, Part 5b of 45 CFR Subtitle A, are amended as follows:

#### PART 5b—PRIVACY ACT REGULATIONS

■ 1. The authority citation for Part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a

■ 2. In § 5b.11, add paragraph (b)(2)(vii)(D) to read as follows:

#### § 5b.11 Exempt systems.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vii) \* \* \*

(D) NIH Records Related to Research Misconduct Proceedings, HHS/NIH, 09–25–0223.

\* \* \* \* \*

Dated: July 20, 2012.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2012–20886 Filed 8–27–12; 8:45 am]

**BILLING CODE 4140–01–P**

#### FEDERAL MARITIME COMMISSION

#### 46 CFR Part 515

[Docket No. 11–09]

RIN 3072–AC46

#### Adjustment of the Amount for the Optional Bond Rider for Proof of NVOCC Financial Responsibility for Trade With the People's Republic of China

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission amends its rules regarding the amount of bond coverage on the optional China Bond Rider for Non-Vessel-Operating Common Carriers (NVOCCs). The final rule is intended to provide NVOCCs with the ability to post a bond with the Commission that satisfies the equivalent of 800,000 Chinese Renminbi, for which the equivalent U.S. Dollar amount has fluctuated since the regulation was first adopted by the Commission.

**DATES:** The final rule is effective November 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Karen V. Gregory, Secretary, Federal

Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725; Rebecca A. Fenneman, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5740, [secretary@fmc.gov](mailto:secretary@fmc.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

Under a Memorandum of Consultations pursuant to the 2003 bilateral Maritime Agreement between the United States and the People's Republic of China (China or the PRC), the PRC does not require U.S. Non-Vessel-Operating Common Carriers (NVOCCs) to make a cash deposit in a Chinese bank as would otherwise be required by Chinese regulations, so long as the NVOCC:

(1) Is a legal person registered by U.S. authorities;

(2) obtains an FMC license as an NVOCC; and

(3) provides evidence of financial responsibility in the total amount of Chinese Renminbi (RMB) 800,000 or U.S. \$96,000.

An FMC-licensed U.S. NVOCC that voluntarily provides an additional surety bond in the amount of \$21,000 (denominated in U.S. Dollars or Chinese Renminbi), which by its conditions is available for potential claims of the Ministry of Transport (MOT) of the PRC (as well as other Chinese agencies) for violations of the Chinese Regulations on International Maritime Transportation, may register in the PRC without paying the cash deposit otherwise required by Chinese law and regulation.

In 2004, the Commission issued a Notice of Proposed Rulemaking (NPR) to explore mechanisms for NVOCCs to file proof of such additional financial responsibility. See 69 FR 4271 (January 29, 2004). On April 1, 2004, the Commission issued a final rule that amended its regulations governing proof of financial responsibility for ocean transportation intermediaries to allow an optional bond rider to be filed with a licensed NVOCC's proof of financial responsibility to provide additional proof of financial responsibility for such carriers serving the U.S. oceanborne trade with the PRC. Docket No. 04–02, *Optional Rider for Proof of Additional NVOCC Financial Responsibility*, 30 S.R.R. 179 (2004).

On April 15, 2011, the Commission received a communication from the Maritime Administration of the U.S. Department of Transportation, transmitting a request from the MOT to revise the Commission's regulations at Appendix E to Subpart C of Part 515—

Optional Rider for Additional NVOCC Financial Responsibility (Optional Rider to Form FMC 48) [Form 48A] (China Bond Rider). MOT requested that the Commission review its regulations set forth in 46 CFR Part 515. MOT asserted that the exchange rate between the U.S. Dollar (\$) and the Renminbi (RMB) has risen from 1:8.276 in 2003 to 1:6.536 at present, an increase of approximately 21.02%. Consequently, MOT asserted, the amount of \$96,000 is inadequate to meet 800,000 RMB at the current exchange rate. Specifically, MOT requested that the regulation be revised to include a provision that would allow for adjustments to the U.S. Dollar amount required in a NVOCC optional Bond Rider covering transportation activities in the U.S./China trades when the U.S. Dollar and the Renminbi exchange rate fluctuates 20% higher or lower than that of the last adjustment. MOT also proposed that the adjustment be jointly approved by the U.S. and the PRC at the bilateral maritime consultative meeting of the same year. Finally, if this proposal is adopted, the MOT also proposed that the existing total required bond amount of U.S. \$96,000 be increased to U.S. \$122,000, which, MOT asserted, is the equivalent amount of 800,000 RMB at the present exchange rate.

#### Comments in Response to the Notice of Inquiry

The Commission issued a Notice of Inquiry (NOI) soliciting public commentary on the proposal on June 10, 2011. The NOI sought general comments on the optional China Bond Rider, and also presented three questions for particular study:

1. Describe how, and to what extent, the optional rider to the required NVOCC bond has impacted your company's business operations? Does this make for more certainty in your business operation? Has the optional rider to the required NVOCC bond impacted your overall business costs? If so, how?
2. What do you see as the advantages and disadvantages of an adjustment to the current optional rider to the required NVOCC bond?
3. Please explain whether, and if so, how significantly your business costs/operations would be affected by a provision that allows for adjustments to the U.S. Dollar amount required in a NVOCC optional China bond rider when the USD (U.S. Dollar) and the RMB (Renminbi) exchange rate fluctuates 20% higher or lower.

The Commission received three comments, summarized below.

*Econocaribe Consolidators:* John Abisch, the President of Econocaribe, did not appear to oppose the suggestion that the China Bond Rider be increased to cover currency valuations. Instead, the comment focused on the effect of the

China Bond Rider and other rider requirements imposed on bondholders, such as the requirement that NVOCC's obtain an additional \$10,000 in bond coverage for each branch office. Econocaribe noted that if a bondholder has five additional branch offices, the total coverage would be \$125,000 (\$75,000 base plus \$50,000 for five branch offices). Econocaribe stated that "[i]f the FMC can get the [Chinese Government] to 'count' the entire bond currently posted, including the amount of the bond posted for the branch offices, even with the [Chinese Government] increasing the bond requirement, this would actually have a slight reduction in the cost of the bond[.]"

*Mohawk Global Logistics:* Richard J. Roche submitted comments on behalf of Mohawk Global Logistics. Mohawk believes that the optional rider method of conducting business is "a fair and equitable" solution to the alternative of posting a cash bond in China. Mohawk prefers bond coverage to cash deposit because it allows Mohawk to "expand [its] offering in China without having to make a significant investment of cash." Similarly, Mohawk understands currency fluctuations, and "agree[s] that an increase in demonstrated bond coverage is warranted due to the lower value of the U.S. dollar today." Mohawk did not identify disadvantages to the increase, other than the minor administrative burden of possibly prorating bonds in effect, addressing different bond premium dates, and the incremental increase in the cost of the China Bond Rider coverage. These disadvantages would be multiplied if the Commission added an automatic trigger based on a currency fluctuation of a defined percentage. If currencies fluctuated rapidly or drastically, it could cause additional administrative burdens on bondholders. Mohawk did not see this outcome as likely, and believed that an automatic trigger for additional coverage could prove workable. Mohawk also agreed with Econocaribe that many bondholders already demonstrate 800,000 RMB worth of coverage if one includes the aggregate amount posted for branch offices. In Mohawk's view:

A more reasonable approach might be for China to determine the exchange value to be assigned in a given 12 month period, and allow NVOCC's to offset the bond coverage based on total bond value, adding any additional coverage as might be required to make up any shortfall not already covered by multiple branch offices. This would limit the bond transactions significantly, while providing simplicity and stability for all involved.

*National Customs Brokers and Forwarders Association (NCBFAA):* The NCBFAA notes in its comments the history of the China Bond rider provision, and the role that the NCBFAA played in Docket No. 04-02, *Optional Bond Rider for Proof of Additional NVOCC Financial Responsibility*. Like Mohawk, the NCBFAA believes that the China Bond Rider has been "extremely successful," and has allowed U.S. companies to provide services in China that might otherwise be difficult if the companies were required to post cash with the Chinese Government. Though U.S.-licensed NVOCCs must register in China in order to conduct business, NCBFAA indicates that the process "has not been unduly onerous," and "has not heretofore unduly increased operating costs."

The NCBFAA also accepts that the respective currencies have fluctuated, and some justification exists for the Chinese Government's request to increase the amount of the optional Bond Rider. Additionally, although the NCBFAA does not object to the Commission's consideration of an optional Bond Rider adjustment any time the currency values fluctuate more than 20%, it does not believe that an automatic adjustment "is necessary or appropriate." The NCBFAA also echoes the beliefs of Mohawk and Econocaribe that many NVOCCs already have an aggregate coverage of greater than \$125,000 (which would surpass the adjusted optional China Bond Rider amount of \$122,000). If the Chinese Government assented, NCBFAA posits that allowing the NVOCCs to count all bond coverage might actually decrease the cost for many U.S.-licensed NVOCCs who do business in China. The NCBFAA looks to the Annex to the 2003 Bilateral Maritime Agreement for support, noting that it did not require a Bond Rider of a certain amount, but instead required evidence of financial responsibility of a certain total amount (\$96,000). The Agreement left open how that total may be satisfied. The NCBFAA thus suggests that the Commission seek the Chinese Government's assent to accepting a total bond amount in addition to a Bond Rider in satisfying the \$122,000 amount. Each NVOCC could thus determine whether it was more cost effective to procure a Bond Rider, or simply rely on its aggregate coverage amount that exceeded \$122,000. This would reduce operating costs for some NVOCCs, but would still maintain adequate coverage.

### Comments in Response to the Notice of Proposed Rulemaking

The Commission also issued a Notice of Proposed Rulemaking (NPR) soliciting public commentary on the proposal on January 5, 2012. The NPR sought general comments on the optional China Bond Rider and on the proposed rulemaking. The proposed rule amended Appendix F to Subpart C of Part 515 (group bonds) to increase the amount specified from \$21,000 to \$50,000. In response to the comments the Commission received from the Notice of Inquiry from June 10, 2012, the proposed rule amended Appendix E to Subpart C of Part 515 (individual NVOCC bonds) to remove pre-specified rider amounts to account for variances in NVOCCs' combined total surety levels maintained to meet the Commission's other financial responsibility requirements, including \$10,000 in bond coverage that NVOCCs maintain for each of their branch offices pursuant to 46 CFR 515.21(a)(4). This recognition means that NVOCCs with branch offices may have rider amounts that vary to satisfy the level of coverage requested by the PRC, so long as their total coverage equals \$125,000. The Commission sought comments particularly on the feasibility of these proposed revisions.

*Carla Leung:* Leung submitted a brief comment expressing significant concern as a small business owner affected by the regulation change. Her comments addressed the increased costs the proposed rulemaking might impose on small businesses in the industry and the ability to stay in business during these difficult financial times. Leung expressed concern that her business may not be able to sustain the increased costs.

*Roanoke Trade:* Matthew L. Zehner, Vice President of Surety Information & Communication for Roanoke Trade Services, Inc. (Roanoke), submitted comment as an insurance broker who provides surety bond products, such as the Chinese Bond Rider, to Ocean Transportation Intermediaries (OTIs). Zehner expressed Roanoke's support for the proposed changes as they represented the continuation of a regime that allows OTIs to "relatively easily" satisfy "certain financial responsibilities and obligations required" by the People's Republic of China. Support was also registered for leaving blank spaces in the rider form in order to allow flexibility for varying business structures.

Zehner did express concern regarding the timing of implementation as riders can generally only be altered or added

in accord with "the underlying bond's anniversary cycle." Roanoke proposes a 12-month phase-in period in order to limit the impact of immediate compliance on the industry and FMC resources. Alternatively, Roanoke would request at least 90 days notice prior to the regulation taking effect as to allow time for proper processing of bonding alterations.

Roanoke also sought "additional clarity or guidance" regarding how to represent bond amounts in paragraphs 1.a. and 1.c. of FMC Form 48A when bonded U.S. office locations are involved.

*FedEx Trade Networks Transport & Brokerage, Inc.:* As a "large freight forwarder and non-vessel operating common carrier licensed by the FMC," FedEx Trade Networks Transport & Brokerage, Inc. (FedEx Trade Networks) registered support for the proposed rulemaking modification. FedEx Trade Networks finds the increased bond requirement a reasonable request by the Chinese Ministry. The comment highlighted the benefit to U.S. NVOCCs of using bonds to satisfy Chinese regulations rather than necessarily operating directly with a Chinese bank.

Likewise, the comment "strongly endorses" FMC proposals to allow bond amounts to be aggregated. FedEx Trade Networks explains: "Allowing NVOCCs to meet the increased bond requirement by maintaining a bond of at least \$125,000.00 would both fully satisfy the terms of the U.S.-China agreement and be more cost effective and efficient."

### Final Rule

In the 2003 Memorandum of Consultations between the U.S. and China, it was agreed that U.S. NVOCCs operating in the China trade would provide "evidence of financial responsibility in the total amount of Chinese Renminbi (RMB) 800,000 or U.S. \$96,000." The Memorandum of Consultations specifies amounts in both Chinese and United States currency, and did not provide for adjustment in exchange rates. Nevertheless, in recognition of the recent slight improvement in the value of the RMB against the U.S. Dollar (and in a spirit of comity and in conformity with Executive Order 13609, *Promoting International Regulatory Cooperation*) the Commission adjusts its optional China Bond Rider so that total NVOCC financial responsibility will equal 800,000 RMB under current exchange rates. The Commission acknowledges that the majority of the submitted comments see value in maintaining the optional China Bond Rider in contrast to any alternative, and recognizes the

PRC's justification for adjusting the value based on exchange rate changes that have taken place since 2004. Therefore, based on the generally favorable comments, the Commission now amends its regulations in 46 CFR Part 515 to adjust the amount of surety available in the optional China Bond Rider provided in Appendices E and F to Subpart C of Part 515 (Form FMC-48A, OMB No. 3072-0018), and provide a method for NVOCCs to demonstrate financial responsibility by aggregating the total bond coverage for all bonds.

The rule amends Appendix F to Subpart C of Part 515 (group bonds) to increase the amount specified from \$21,000 to \$50,000. In response to the comments the Commission received, the rule amends Appendix E to Subpart C of Part 515 (individual NVOCC bonds) to remove pre-specified rider amounts to account for variances in NVOCCs' combined total surety levels maintained to meet the Commission's other financial responsibility requirements, including \$10,000 in bond coverage that NVOCCs maintain for each of their branch offices pursuant to 46 CFR 515.21(a)(4). This recognition means that NVOCCs with branch offices may have rider amounts that vary to satisfy the level of coverage requested by the PRC, so long as their total coverage equals \$125,000.

The Commission intends to review the value of the total coverage provided by the optional China Bond Rider periodically.

### Small Business Regulatory Flexibility Threshold Analysis

Pursuant to 5 U.S.C. 605(b), and in response to comments regarding small businesses affected by this optional China Bond Rider, a Regulatory Flexibility Threshold Analysis has been performed; it has been determined that the final rule will not have a significant economic impact on a substantial number of small entities.

The small entities affected are ocean transportation intermediaries (OTIs). In determining whether a significant economic impact would occur under the new rule, the first estimate costs of the bond rider coverage were assessed. The economic impact of the optional China Bond Rider has been estimated to be less than \$20 for every \$1,000 of bond rider coverage, with most estimates being under \$15 for every \$1,000 of bond rider coverage. To that end, \$21,000 of bond rider coverage would cost approximately \$420.00 under this analysis. Given this information, it is determined that these first estimate costs are not significant to small entities. Uncertainty remains on the

exact amount the optional China Bond Rider coverage would cost; however, this uncertainty is minimized given the fact that over seven bond rider coverage estimates were collected from agents in the market.

To determine whether a substantial number of small entities would be affected, the OTI licensing statistics were reviewed. There are approximately 3,500 licensed U.S. OTIs that could file for the optional China Bond Rider; currently, only 350 OTIs have filed for the available optional China Bond Rider. This amounts to less than 10% of the entire market that may reasonably participate in the optional bond rider program. Based on this data, it is determined that a substantial number of small entities will not be affected by this rule.

It is important to note that the optional China Bond Rider is not an FMC-required bond; rather it is an alternative instrument crafted by the United States and China to relieve U.S. NVOCCs from the People's Republic of China's cash deposit requirement. The rule will not have a significant economic impact on a substantial number of small entities as outlined by the Regulatory Flexibility Threshold Act.

#### Certifications and Statutory Reviews

The Commission certifies this rulemaking because the proposed changes establish an optional provision for U.S. licensed NVOCCs, which may be used at their discretion. While some of these businesses qualify as small entities under the guidelines of the Small Business Administration, the rule provides a more cost-effective alternative than would otherwise be available to assist U.S. licensed NVOCCs with their business endeavors in the PRC. As such, the rule helps to promote U.S. business interests in the PRC and facilitate U.S. foreign commerce.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Commission recognizes that the majority of businesses that would be affected by this rule qualify as small entities under the guidelines of the Small Business Administration. The rule, however, would encompass an optional provision for U.S. licensed NVOCCs, which may be used at their discretion. The rule would not pose an economic detriment to all NVOCCs regulated by the Commission. It would

only impact those NVOCCs who choose to exercise the option, at this date approximately 10% of the entire pool of all NVOCCs. Instead of applying to all NVOCCs (a majority of which are small entities), it adjusts the favored method of demonstrating financial responsibility for those NVOCCs who choose to use it. This method of demonstrating financial responsibility implements an agreement with the PRC that allows U.S. NVOCCs to avoid having to make a large cash deposit in a Chinese bank. As such, the rule would help continue to promote U.S. business interests in the PRC and facilitate U.S. foreign commerce.

This rule is not a "major rule" under 5 U.S.C. 804(2).

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Public reporting burden for this collection of information was estimated to be 1.25 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

#### List of Subjects in 46 CFR Part 515

Freight, Maritime carriers, Non-vessel-operating common carriers.

For the reasons stated in the supplementary information, the Federal Maritime Commission amends 46 CFR Part 515 as follows.

#### PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 1. The authority citation for part 515 continues to read as follows:

**Authority:** 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

■ 2. Revise Appendix E to Subpart C of Part 515 to read as follows:

#### APPENDIX E TO SUBPART C OF PART 515—OPTIONAL RIDER FOR ADDITIONAL NVOCC FINANCIAL RESPONSIBILITY (OPTIONAL RIDER TO FORM FMC-48) [FORM 48A]

FMC-48A, OMB No. [3072-0018, (04/06/04)]

Optional Rider for Additional NVOCC Financial Responsibility [Optional Rider to Form FMC-48]

#### RIDER

The undersigned [\_\_\_\_], as Principal and [\_\_\_\_], as Surety do hereby agree that the existing Bond No. [\_\_\_\_] to the United States of America and filed with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:

a. An additional condition of this Bond is that \$\_\_\_\_ (payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China ("MOC") or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003.

b. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1a of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1a regardless of the number of claims.

c. The total amount of coverage available under this Bond and all of its riders, available pursuant to the terms of section 1(a.) of this rider, equals \$\_\_\_\_. The total amount of aggregate coverage equals or exceeds \$125,000.

d. This Rider is effective the [\_\_\_\_] day of [\_\_\_\_], 20 [\_\_\_\_], and shall continue in effect until discharged, terminated as herein provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by written notice to the Federal Maritime Commission at its offices in Washington, DC, accompanied by proof of transmission of notice to MOC. Such termination shall become effective thirty (30) days after receipt of said notice and proof of transmission by the Federal Maritime Commission. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

2. This Bond remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this [ ] day of [ ], 20 [ ],

[Principal], By:

[Surety], By:

■ 3. Revise paragraph 1.a. of Appendix F to Subpart C of Part 515 to read as follows:

**APPENDIX F TO SUBPART C OF PART 515—OPTIONAL RIDER FOR ADDITIONAL NVOCC FINANCIAL RESPONSIBILITY FOR GROUP BONDS [OPTIONAL RIDER TO FORM FMC-69]**

\* \* \* \* \*

1. \* \* \*

a. An additional condition of this Bond is that \$ [ ] (payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to any NVOCC enumerated in an Appendix to this Rider to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China ("MOC") or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003. Such amount is separate and distinct from the bond amount set forth in the first paragraph of this Bond. Payment under this Rider shall not reduce the bond amount in the first paragraph of this Bond or affect its availability. The Surety shall indicate that \$50,000 is available to pay such fines and penalties for each NVOCC listed on appendix A to this Rider wishing to exercise this option.

\* \* \* \* \*

By the Commission.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2012-21095 Filed 8-27-12; 8:45 am]

**BILLING CODE 6730-01-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 120709225-2365-01]

RIN 0648-BC32

**Temporary Rule To Establish Management Measures for the Limited Harvest and Possession of South Atlantic Red Snapper in 2012**

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

**ACTION:** Temporary rule; emergency action.

**SUMMARY:** NMFS issues this final temporary rule to establish management measures to allow for the limited harvest and possession of red snapper in or from the South Atlantic exclusive economic zone (EEZ) in 2012, as requested by the South Atlantic Fishery Management Council (Council). This rule also announces the opening and closing dates of the 2012 commercial and recreational fishing seasons for red snapper. The intended effect of this temporary rule is to preserve a significant economic opportunity in the South Atlantic snapper-grouper fishery that otherwise might be foregone. Furthermore, limited commercial and recreational harvest of red snapper in 2012 will provide an opportunity to collect fishery-dependent data that could be useful for the 2014 red snapper stock assessment.

**DATES:** This temporary rule is effective August 28, 2012 through December 31, 2012. The recreational red snapper season opens at 12:01 a.m., local time, on September 14, 2012, and closes at 12:01 a.m., local time, on September 17, 2012; then reopens at 12:01 a.m., local time, on September 21, 2012, and closes at 12:01 a.m., local time, on September 24, 2012. The commercial red snapper season opens at 12:01 a.m., local time, on September 17, 2012, and closes at 12:01 a.m., local time, on September 24, 2012.

**ADDRESSES:** Electronic copies of the documents in support of this temporary rule, which include an environmental assessment, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

**FOR FURTHER INFORMATION CONTACT:** Rick DeVictor, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: [rick.devictor@noaa.gov](mailto:rick.devictor@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage South Atlantic snapper-grouper including red snapper under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

**Background**

Red snapper are overfished and undergoing overfishing. The harvest and possession of red snapper has been prohibited since January 4, 2010, initially through temporary rules (74 FR 63673, December 4, 2009 and 75 FR 27658, May 18, 2010), and then through the final rule to implement Amendment 17A to the FMP (75 FR 76874, December 9, 2010). Amendment 17A continued the prohibition on a permanent basis by implementing an annual catch limit (ACL) for red snapper of zero (landings only). Amendment 17A also implemented a rebuilding plan for red snapper, which specifies that red snapper biomass must increase to the target rebuilt level in 35 years, starting from 2010. The final rule implementing Amendment 17A also included a large area closure for most snapper-grouper species, however, this area closure did not become effective because it was determined not to be necessary to end the overfishing of red snapper (76 FR 23728, April 28, 2011). At its June 2012 meeting, the Council received new information regarding discard estimates for red snapper. Using this data, the Council and NMFS determined that a limited season for red snapper would be possible in 2012. Therefore, the Council voted, and NMFS is implementing, emergency rulemaking to allow for the limited harvest and possession of red snapper in or from the South Atlantic EEZ in 2012.

**Status of the Stock**

The most recent Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for red snapper, SEDAR 24, was completed in October 2010. Much like the stock assessment completed in 2008, this assessment showed red snapper to be overfished and undergoing overfishing, but also showed that red snapper were undergoing overfishing at a lower rate than found in the 2008 stock assessment. The next benchmark stock

assessment for red snapper was scheduled for 2013. However, this assessment has been delayed until 2014 in order to gather more data.

#### Need for This Temporary Rule

The Southeast Fisheries Science Center (SEFSC) has new discard data collected since the last benchmark assessment. The new data includes 2010 and 2011 discard estimates from commercial logbooks, the Marine Recreational Fisheries Statistical Survey (MRFSS) and the Southeast Headboat Survey. These data were used to evaluate red snapper discards in relation to the acceptable biological catch (ABC) adopted by the Council (using SEDAR 24 rebuilding projections) to determine if a limited harvest of red snapper can be allowed for snapper-grouper fishermen in 2012. Using the average of 2010 and 2011 estimated discard mortalities and the 2012 ABC, NMFS has determined that the estimated discard mortality level for 2012 is below the 2012 ABC. Therefore, a limited harvest and possession of red snapper is possible in 2012 while staying within the rebuilding plan. Based on the new discard estimates reviewed at its June 2012 meeting, the Council requested that NMFS promulgate emergency regulations to allow for the limited harvest and possession of red snapper in 2012. The Council voted to implement commercial and recreational management measures to ensure that only a limited amount of red snapper would be harvested and possessed and that this allowance would not prevent the stock from rebuilding to target levels within the specified timeframe.

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists and this temporary rule is promulgated under these criteria. Specifically, NMFS' policy guidelines require that an emergency:

- (1) Result from recent, unforeseen events or recently discovered circumstances; and
- (2) Present serious conservation or management problems in the fishery; and
- (3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The Council requested dead discard estimates from the SEFSC for 2010 and 2011, in anticipation of holding

discussions during the June 2012 Council meeting to consider a limited reopening of red snapper. In a letter dated April 7, 2012, the Council asked for red snapper discard mortality estimates to compare to the previously projected mortality levels from the latest stock assessment. The discard estimates provided by the SEFSC from commercial logbooks, MRFSS, and the Southeast Headboat Survey constitute recently discovered circumstances. The ABC adopted by the Council from SEDAR 24 for 2012 is 86,000 fish. Red snapper harvest can only be allowed if projected mortalities from the harvest and release of fish are less than the ABC for that year. Using the average of 2010 and 2011 estimated mortalities and the 2012 ABC, NMFS estimates there will be 72,933 red snapper killed in 2012. Since the ABC for 2012 is 86,000 fish, the ABC is higher than the estimated discard mortalities for 2012. As a result, the Council and NMFS determined 13,067 red snapper may be harvested in or from the South Atlantic in 2012.

Input from the public and from a number of fishing communities indicates the harvest prohibition for red snapper has caused socio-economic harm to individuals and associated communities. Unnecessarily prolonging the harvest prohibition presents serious conservation and management problems in the snapper-grouper fishery. Therefore, implementing a limited commercial and recreational season will likely increase socioeconomic benefits for South Atlantic snapper-grouper fishermen. Increased fishing opportunities should provide direct benefits to fishermen in the form of additional income and recreational opportunities, in addition to indirect benefits to businesses that provide supplies for fishing trips. NMFS expects the 2012 fishing season revenues to commercial vessels will increase by about \$86,000 (in total; 694 snapper-grouper permitted vessels may potentially participate in this harvest) and that benefits to the recreational anglers will increase by about \$232,000 to \$724,000 (in total; assuming that each of the 9,399 recreational fish is harvested by an individual angler). It is also likely that revenues and profits to for-hire vessels and support businesses will increase, but their magnitude cannot be estimated with the current information. Implementing the limited harvest of red snapper should also improve compliance and conservation as fishermen view management as being responsive to their needs and support this and other regulations. Additionally, a new stock assessment for red snapper

has been delayed in order to gather more data. A limited commercial and recreational season for red snapper in 2012 will provide an opportunity to collect fishery-dependent data, including age composition and catcher-unit-effort data that could be useful for and enhance the 2014 red snapper stock assessment.

The immediate benefits of implementing a limited commercial and recreational fishing season for red snapper in 2012 provide good cause to waive advance notice and public comment. A limited red snapper season should be implemented as soon as possible in 2012 so as not to open the season too late in the fishing year when poor weather can lead to unsafe fishing conditions. Comments on this action at the June 2012 Council meeting indicated that many fishermen favored a fall season. The U.S. Coast Guard advised that a red snapper opening in late 2012 could lead to unnecessary accidents from unsafe fishing conditions. The Council took all of this information into consideration when they requested a temporary rule for emergency action.

#### Measures Contained in This Temporary Rule

This temporary rule implements several management measures to authorize the limited harvest and possession of red snapper in or from the South Atlantic EEZ in the 2012 fishing year. The commercial annual catch limit (ACL) is set at 20,181 lb (9,443 kg), gutted weight, which is equal to the commercial quota, and the recreational ACL is set at 9,399 fish. These ACLs are based on the total ACL selected by the Council (13,097 fish), and the current allocation ratio for red snapper (28.07 percent commercial and 71.93 percent recreational). Accountability measures (AMs) are implemented to prevent these ACLs from being exceeded. NMFS and the Council are establishing several management measures that act as AMs, in order to constrain red snapper harvest to these ACLs. Limited commercial and recreational red snapper seasons are established for 2012. The recreational season will open for two consecutive weekends made up of Fridays, Saturdays, and Sundays and the commercial season will be open for 7 days, starting on the Monday following the first recreational weekend opening. The recreational season opens at 12:01 a.m., local time, on September 14, 2012, and closes at 12:01 a.m., local time, on September 17, 2012; then reopens at 12:01 a.m., local time, on September 21, 2012, and closes at 12:01 a.m., local time, on September 24, 2012.

The commercial season opens at 12:01 a.m., local time, on September 17, 2012, and closes at 12:01 a.m., local time, on September 24, 2012. The SEFSC will monitor commercial landings in-season to determine whether the commercial ACL has been harvested. If the commercial ACL has not been harvested during the 7-day season, the Council has given the RA the authority to reopen the commercial sector for another limited time period. If severe weather conditions exist, the Council has given the RA the authority to modify these opening and closing dates. The RA will determine when severe weather conditions exist, the duration of the severe weather conditions, and which geographic areas are deemed affected by severe weather conditions. If severe weather conditions exist or if the SEFSC determines the commercial ACL was not harvested and a reopening of the commercial sector is possible, the RA will file a notification to that effect with the Office of the Federal Register, and announce via NOAA Weather Radio and in a Fishery Bulletin any change in or reopening of the red snapper fishing seasons. During these limited seasons, the recreational sector is allowed a 1-fish per person daily bag limit and the commercial sector a 50-lb (22.7-kg) daily trip limit. The 1-fish recreational bag limit is included in the 10-fish aggregate snapper bag limit. No size limits are implemented for either sector, to decrease regulatory discards (fish returned to the water because they are below the minimum size limit).

### Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this temporary rule is necessary to preserve a significant economic opportunity for South Atlantic snapper-grouper fishermen that otherwise would be foregone and is consistent with the Magnuson-Stevens Act and other applicable laws.

This temporary rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because they are contrary to the public interest. This temporary rule preserves a significant economic opportunity for South Atlantic snapper-grouper fishermen that would otherwise be foregone. Limited harvest and possession of red snapper in 2012 will likely result in revenue increases to commercial vessels and benefit increases to

recreational anglers, in addition to providing opportunity to for-hire vessels in booking more trips that could increase their revenues and profits. At the June 2012 Council meeting, South Atlantic snapper-grouper fishermen discussed the merits of opening red snapper in the South Atlantic for a limited time in 2012. Fishermen will be able to keep the red snapper that they are currently required to discard. Commercial fishermen should be able to increase their incomes in 2012 by about \$86,000 (in total) by being able to sell a highly marketable fish for a limited time. Additionally, limited red snapper seasons will provide an opportunity to collect fishery-dependent data that will likely be useful for the 2014 red snapper stock assessment. Currently, the lack of available red snapper data hinders the ability to assess the status of the stock. Delaying the implementation of this rulemaking to provide prior notice and the opportunity for public comment would reduce the likelihood of opening the red snapper component of the snapper-grouper fishery in the early fall months when weather conditions are more favorable and fishing conditions are safer.

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

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 22, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

### § 622.32 [Amended]

■ 2. In § 622.32, paragraph (b)(3)(vi) is suspended.

■ 3. In § 622.35, paragraph (l) is added to read as follows:

### § 622.35 Atlantic EEZ seasonal and/or area closures.

\* \* \* \* \*

(l) *Closures of the commercial and recreational sectors for red snapper.* The commercial and recreational sectors for red snapper are closed, except for a limited commercial season (7-day or less openings) and a limited recreational season (weekends consisting of Fridays, Saturdays, and Sundays only) determined by the RA. The Southeast Fisheries Science Center (SEFSC) will monitor commercial landings in-season to determine if the ACL has been harvested. If the SEFSC determined the ACL has not been harvested in the first 7-day opening, the RA may reopen the commercial sector for an additional limited time. If severe weather conditions exist, the RA may modify the opening and closing dates. The RA will determine when severe weather conditions exist, the duration of the severe weather conditions, and which geographic areas are deemed affected by severe weather conditions. If severe weather conditions exist or if NMFS determines a reopening of the commercial sector is possible, the RA will file a notification to that effect with the Office of the Federal Register, and announce via NOAA Weather Radio and Fishery Bulletin any change in the red snapper fishing seasons.

\* \* \* \* \*

### § 622.37 [Amended]

■ 4. In § 622.37, paragraph (e)(1)(v) is suspended.

■ 5. In § 622.39, paragraphs (d)(1)(iv), (d)(1)(viii) and (d)(1)(ix) are suspended, and paragraphs (d)(1)(xi) and (d)(1)(xii) are added to read as follows:

### § 622.39 Bag and possession limits.

\* \* \* \* \*

(d) \* \* \*  
(1) \* \* \*

(xi) Snappers, combined—10, of which no more than 1 may be red snapper. The 1-fish red snapper bag limit applies during the recreational red snapper season, specified in § 622.35(l). However, excluded from this 10-fish bag limit are cubera snapper, measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and vermilion snapper. (See § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(xii) South Atlantic snapper-grouper, combined—20. However, excluded from this 20-fish bag limit are tomate, blue runner, and those specified in paragraphs (d)(1)(i) through (vii) and paragraphs (d)(1)(x) and (xi) of this section.

\* \* \* \* \*

■ 6. In § 622.44, paragraph (c)(9) is added to read as follows:

**§ 622.44 Commercial trip limits.**

\* \* \* \* \*

(c) \* \* \*

(9) *Red snapper*. For the duration of the commercial red snapper season, specified in § 622.35(l), the commercial trip limit is 50 lb (22.7 kg), gutted weight.

\* \* \* \* \*

**§ 622.45 [Amended]**

■ 7. In § 622.45, paragraph (d)(10) is suspended.

■ 8. In § 622.49, paragraph (b)(25) is added to read as follows:

**§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).**

\* \* \* \* \*

(b) \* \* \*

(25) *Red snapper*—(i) *Commercial sector*. The commercial season for red snapper specified in § 622.35(l) and the commercial trip limit specified in § 622.44(c)(9) serve as the commercial AMs for red snapper. The Southeast Fisheries Science Center (SEFSC) will monitor commercial landings in-season to determine if the ACL has been harvested. If the SEFSC determines the

ACL has not been harvested in the first 7-day opening, the RA may reopen the commercial sector for an additional limited time. The commercial ACL for red snapper is 20,818 lb (9,443 kg), gutted weight.

(ii) *Recreational sector*. The recreational season specified in § 622.35(l) and the recreational bag limit specified in § 622.39(d)(1)(xi) serve as the recreational AMs for red snapper. The recreational ACL for red snapper is 9,399 fish.

\* \* \* \* \*

[FR Doc. 2012-21227 Filed 8-27-12; 8:45 am]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 77, No. 167

Tuesday, August 28, 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 ENERGY

### 10 CFR Parts 429 and 430

[Docket Number EERE-2012-BT-STD-0027]

RIN 1904-AC81

#### Energy Conservation Standards for Residential Dehumidifiers: Public Meeting and Availability of the Framework Document

**AGENCY:** Department of Energy, Office of Energy Efficiency and Renewable Energy.

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** This document announces that the period for submitting comments on the dehumidifier framework document is extended to October 17, 2012.

**DATES:** DOE will accept comments, data, and information on the dehumidifier framework received no later than October 17, 2012.

**ADDRESSES:** Any comments submitted must identify the dehumidifier framework document and provide docket number EERE-2012-BT-STD-0027. Comments may be submitted using any of the following methods:

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

- *Email:* [ResDehumidifier2012STD0027@ee.doe.gov](mailto:ResDehumidifier2012STD0027@ee.doe.gov). Include docket number EERE-2012-BT-STD-0027 and/or RIN 1904-AC81 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.

- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2], 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy,

Building Technologies Program, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

*Docket:* For access to the docket to read background documents or comments received, please call Ms. Brenda Edwards at the above telephone number for additional information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information may be sent to Mr. Stephen L. Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2], 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: 202-586-7463. Email: [Stephen.Witkowski@ee.doe.gov](mailto:Stephen.Witkowski@ee.doe.gov).

In the office of the General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Room 6A-179, Washington, DC 20585. Telephone: 202-586-7796; Email: [Elizabeth.Kohl@hq.doe.gov](mailto:Elizabeth.Kohl@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On August 17, 2012, DOE published a notice of availability of a framework document to consider energy conservation standards for dehumidifiers. (77 FR 49739) The notice provided for the submission of comments by September 17, 2012. Commenters stated that the public meeting was scheduled for September 24, 2012, and that the comment period should extend past the public meeting date. DOE has determined that an extension of the public comment period is appropriate for this reason and is hereby extending the comment period. DOE will consider any comments received by October 17, 2012.

#### Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1)

A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on August 22, 2012.

**Steven Chalk,**

*Acting Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2012-21171 Filed 8-27-12; 8:45 am]

**BILLING CODE 6450-01-P**

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### 10 CFR Part 1708

#### Procedures for Safety Investigations

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Defense Nuclear Facilities Safety Board is extending the time for comments on its proposed rule, Procedures for Safety Investigations, which published July 27, 2012 in the **Federal Register**, 77 FR 44174. The comment period expires August 27, 2012.

**DATES:** Comments are due by 5 p.m. September 26, 2012.

**ADDRESSES:** Submit comments to John G. Batherson, Associate General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004. Send comments by facsimile to (202) 208-6518. Send comments by email to John G. Batherson at [JohnB@dnfsb.gov](mailto:JohnB@dnfsb.gov).

**FOR FURTHER INFORMATION CONTACT:** John G. Batherson, Associate General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004-2901, (202) 694-7018

**SUPPLEMENTARY INFORMATION:** The Defense Nuclear Facilities Safety Board is extending the comment period on the proposed rule, Procedures for Safety Investigations, because it has become aware of information which will best serve the public interest by extending the deadline for submission of comments for consideration by the Board. For this reason, the Board is extending the comment period to September 26, 2012.

Dated: August 22, 2012.

**Peter S. Winokur,**  
*Chairman.*

[FR Doc. 2012-21237 Filed 8-27-12; 8:45 am]

**BILLING CODE 3670-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2012-0699; Notice No. 25-12-02-SC]

#### Special Conditions: Airbus, Model A318-112 Airplane (S/N 3238); Certification of Cooktops

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for the Airbus Model A318-112 airplane. This airplane as modified by Fokker Services B.V. will have a novel or unusual design feature associated with a cooktop installation. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Send your comments on or before October 12, 2012.

**ADDRESSES:** Send comments identified by docket number FAA-2012-0699 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC, 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in

Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

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

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

**FOR FURTHER INFORMATION CONTACT:** Dan Jacquet, FAA, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057-3356; telephone 425-227-2676; facsimile 425-227-1100; email [daniel.jacquet@faa.gov](mailto:daniel.jacquet@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

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

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

##### Background

On January 12, 2010, Fokker Services B.V. applied for a supplemental type certificate for an interior conversion on an Airbus Model A318-112 airplane, serial number 3238. The Airbus Model A318-112 airplane is a large, transport-category airplane powered by two

CFM56-5B9/P engines, with a basic maximum takeoff weight of 130,071 pounds.

Fokker Services B.V. is requesting certification to convert this Airbus Model A318-112 to a corporate jet, operating for both public and private use (not for hire, not for common carriage). For private use the aircraft will be certified for a maximum of 8 crew and 23 passengers, and the public use occupancy will be a maximum of 8 crew and 19 passengers. The aircraft will be subdivided into an entrance way, executive lounge, two private lounges, and a private bathroom. The entry will include the installation of two wet galleys. One of the galleys will include the installation of two combined cooktop pan units. The addition of a cooktop to this interior conversion can lead to hazards to both occupants and the aircraft. Special consideration is needed to address the safety standards associated with this installation.

##### Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101 Fokker Services B.V. must show that the Airbus Model A318-112 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A28NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in A28NM are 14 CFR part 25, as amended by Amendments 25-1 through 25-56, with reversions to earlier amendments, voluntary compliance to later amendments, special conditions, equivalent safety findings, and exemptions listed in the type certificate data sheet.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A318-112 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A318–112 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

#### Novel or Unusual Design Features

The Airbus Model A318–112 airplane, serial number 3238, will incorporate the following novel or unusual design feature: Cooktops in the passenger cabin. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards to protect the airplane and its occupants from these potential hazards. The applicant's proposed system is considered to be a novel or unusual design feature.

#### Discussion

Currently, ovens are the prevailing means of heating food on airplanes. Ovens are characterized by an enclosure that contains both the heat source and the food being heated. The hazards presented by ovens are thus inherently limited and are well understood through years of service experience. Cooktops, on the other hand, are characterized by exposed heat sources and the presence of relatively unrestrained hot cookware and heated food. These may represent unprecedented hazards to both occupants and the airplane.

Cooktops could have serious passenger and aircraft safety implications if appropriate requirements are not established for their installation and use. The requirements identified in these proposed special conditions are in addition to those considerations identified in Advisory Circular (AC) 20–168, Certification Guidance for Installation of Non-Essential, Non-Required Aircraft Cabin Systems and Equipment (CS&E), and those in AC 25–17A, Transport Airplane Cabin Interiors Crashworthiness Handbook. The intent of these proposed special conditions is to provide a level of safety that is consistent with that on similar aircraft without cooktops.

In similar cooktop installations, the FAA has required a deployable cover and a means to automatically shut off the power when the cover was in use. In lieu of these requirements, the

cooktop installation in this Airbus A318–112 will have a lid and a timer that is not covered by the lid. The timer switches the heating elements on and off, has a maximum time of 20 minutes, and is still accessible when the lid is closed. The cabin crew will be instructed on its use. In addition to the lid and timer, the applicant will supply a fire blanket that is 1,100 by 1,100 mm (catalogue no. SAP–967–T). The fire blanket meets the requirements of British Standard BS 6575:1965. These specifications contain the requirements for flexibility, heat, electrical resistance, and fire extinguishing including cooking oil fires for light duty and heavy duty (industrial) applications.

For this cooktop installation, the FAA requires evidence that with the cooktop lid closed, the temperature set on “high,” and the timer at maximum, the cooktop will maintain safe operation and will not create a hazardous condition even with cooking oil in the cooktop.

#### Applicability

As discussed above, these special conditions are applicable to the Airbus Model A318–112. Should Fokker Services B.V. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A28NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

#### Conclusion

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

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

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

#### The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus Model A318–112 airplane, serial number 3238, modified by Fokker Services B.V.

Cooktop installations with electrically powered burners must comply with the following criteria:

1. Means, such as conspicuous burner-on indicators, physical barriers,

or handholds, must be installed to minimize the potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Conditions of turbulence must be considered.

2. Sufficient design means must be included to restrain cookware while in place on the cooktop, as well as representative contents, e.g., soup, sauces, etc., from the effects of flight loads and turbulence. Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware that is identified for use with the cooktop. Restraints must be designed to be easily utilized and effective in service. The cookware restraint system should also be designed so that it will not be easily disabled, thus rendering it unusable. Placarding must be installed which prohibits the use of cookware that cannot be accommodated by the restraint system.

3. Placarding must be installed that prohibits the use of cooktops (i.e., power on any burner) during taxi, takeoff, and landing.

4. Means must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop. Two acceptable means of complying with this requirement are as follows:

a. Placarding must be installed that prohibits any burner from being powered when the cooktop is unattended, which would prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered; a fire detector must be installed in the vicinity of the cooktop that provides an audible warning in the passenger cabin; and a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. Access to the extinguisher must not be blocked by a fire on or around the cooktop. One of the fire extinguishers required by § 25.851 may be used to satisfy this requirement. If this is not possible, then the extinguisher in the galley area would be additional; or,

b. An automatic, thermally activated, fire-suppression system must be installed to extinguish a fire at the cooktop and immediately adjacent surfaces. The agent used in the system must be an approved, total-flooding agent suitable for use in an occupied area. The fire-suppression system must have a manual override. The automatic activation of the fire-suppression system must also automatically shut off power to the cooktop.

5. The surfaces of the galley surrounding the cooktop, which would be exposed to a fire on the cooktop surface or in cookware on the cooktop, must be constructed of materials that comply with the flammability requirements of 14 CFR part 25, appendix F, part III. This requirement is in addition to the flammability requirements typically required of the materials in these galley surfaces. During the selection of these materials, consideration must also be given to ensure that the flammability characteristics of the materials will not be adversely affected by the use of cleaning agents and utensils used to remove cooking stains.

6. The cooktop ventilation system ducting must be protected by a flame arrestor. In addition, procedures and time intervals must be established and included in the instructions for continued airworthiness to inspect and clean or replace the ventilation system to prevent a fire hazard from the accumulation of flammable oils. [Note: The applicant may find additional useful information in the Society of Automotive Engineers, Aerospace Recommended Practice 85, Rev. E, entitled, "Air Conditioning Systems for Subsonic Airplanes," dated August 1, 1991.]

7. Means must be provided to contain spilled foods or fluids in a manner that prevents the creation of a slipping hazard to occupants, and that will not lead to the loss of structural strength due to corrosion.

8. Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

9. A means to shut off power to the cooktop must be provided at the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the airplane flight manual (AFM) will be required.

10. Cooktop installations must incorporate a timer that will switch the heating elements off after a maximum time of 20 minutes.

11. Instructions for the cabin crew to ensure safe operation of the cooktop lid and timer must be provided.

12. Evidence must be provided that with the cooktop lid closed, the temperature set on "high," and the timer at maximum, the cooktop will maintain safe operation and will not create a hazardous condition even with cooking oil in the cooktop.

Issued in Renton, Washington, on August 22, 2012.

**Ali Bahrami,**

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

[FR Doc. 2012-21100 Filed 8-27-12; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2012-0861; Directorate Identifier 2012-NM-074-AD]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Bombardier, Inc. Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes. This proposed AD was prompted by reports of the loss of the fixed frequency system, leading to the loss of power to the left and right buses and all systems serviced by these buses. This proposed AD would require modification of the wiring and changes to existing airworthiness limitations. We are proposing this AD to prevent loss of the fixed frequency system, which could lead to loss of a number of the pilot's and co-pilot's flight instruments, in addition to other avionics systems.

**DATES:** We must receive comments on this proposed AD by October 12, 2012.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-

4000; fax 416-375-4539; email [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); Internet <http://www.bombardier.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

#### **Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7301; fax (516) 794-5531.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2012-0861; Directorate Identifier 2012-NM-074-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

##### **Discussion**

The Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2012-09, dated February 15, 2012 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

There have been several reported occurrences of the loss of the 400Hz [hertz] Fixed Frequency System, leading to the loss of power to the Left 115VAC [alternating current] bus, the Right 115VAC bus, the Left 26VAC bus, the Right 26VAC bus and all systems serviced by these four electrical buses. The loss of the 400Hz Fixed Frequency System has been attributed to a failure of one or two static inverters, which resulted in the loss of the remaining inverters. The loss of systems serviced by the four fixed frequency electrical buses creates an unsafe condition due to the loss of a number of the pilot's and co-pilot's flight instruments, in addition to the other avionics systems.

This [Canadian] Airworthiness Directive (AD) mandates the wiring modification to untie the 400Hz inverters and additional Airworthiness Limitation tasks introduced as a result of this modification.

You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Bombardier has issued the following service information:

- Bombardier Service Bulletin 8–24–87, Revision B, dated April 3, 2012;
- de Havilland Dash 8 Series 100 Temporary Revision AWL–117, dated April 8, 2011, to Section AWL—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 100 Maintenance Program Manual, PSM 1–8–7.
- de Havilland Dash 8 Series 200 Temporary Revision AWL 2–48, dated April 8, 2011, to Section AWL—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 200 Maintenance Program Manual, PSM 1–82–7; and
- de Havilland Dash 8 Series 300 Temporary Revision AWL 3–118, dated April 8, 2011, to Section AWL—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 300 Maintenance Program Manual, PSM 1–83–7.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or

develop on other products of the same type design.

### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 94 products of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$71,910, or \$765 per product.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with

this proposed AD and placed it in the AD docket.

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**Bombardier, Inc.:** Docket No. FAA–2012–0861; Directorate Identifier 2012–NM–074–AD.

#### (a) Comments Due Date

We must receive comments by October 12, 2012.

#### (b) Affected ADs

None.

#### (c) Applicability

(1) This AD applies to Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category, serial numbers 002 through 672 inclusive.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these actions, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

#### (d) Subject

Air Transport Association (ATA) of America Code 24; Electrical Power.

#### (e) Reason

This AD was prompted by reports of the loss of the fixed frequency system, leading to the loss of power to the left and right buses and all systems serviced by these buses. We are issuing this AD to prevent loss of the fixed frequency system, which could lead to loss of a number of the pilot's and co-pilot's flight instruments, in addition to other avionics systems.

**(f) Compliance**

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

**(g) Wiring Modifications**

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Incorporate the wiring modifications specified in and in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–24–87, Revision B, dated April 3, 2012.

**(h) Airplane Maintenance Program Revision**

Within 30 days after the effective date of this AD: Revise the airplane maintenance program by incorporating Task 2420/13, Operational Check of Relays K4, K5, K6, and K7 (Post Modsum 8Q101917), in the applicable temporary revision specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD. The initial compliance time for Task 2420/13 is within 18,000 flight hours after accomplishing the actions specified in paragraph (g) of this AD, or 30 days after the effective date of this AD, whichever occurs later.

(1) For Model DHC–8–102, –103, and –106 airplanes: de Havilland Dash 8 Series 100 Temporary Revision AWL–117, dated April 8, 2011, to Section AWL—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 100 Maintenance Program Manual, PSM 1–8–7.

(2) For Model DHC–8–201 and –202 airplanes: de Havilland Dash 8 Series 200 Temporary Revision AWL 2–48, dated April 8, 2011, to Section AWL—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 200 Maintenance Program Manual, PSM 1–82–7.

(3) For Model DHC–8–301, –311, and –315 airplanes: de Havilland Dash 8 Series 300 Temporary Revision AWL 3–118, dated April 8, 2011, to Section AWL—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 300 Maintenance Program Manual, PSM 1–83–7.

**(i) No Alternative Actions or Intervals**

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections) or intervals may be used, unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

**(j) Credit for Previous Actions**

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–24–87, dated May 26, 2011; or Bombardier Service Bulletin 8–24–87, Revision A, dated October 5, 2011.

**(k) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York Aircraft

Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

**(l) Related Information**

(1) Refer to MCAI Canadian Airworthiness Directive CF–2012–09, dated February 15, 2012, and the service information specified in paragraphs (l)(1)(i) through (l)(1)(iv) of this AD, for related information.

(i) Bombardier Service Bulletin 8–24–87, Revision B, dated April 3, 2012.

(ii) de Havilland Dash 8 Series 100 Temporary Revision AWL–117, dated April 8, 2011, to Section AWL—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 100 Maintenance Program Manual, PSM 1–8–7.

(iii) de Havilland Dash 8 Series 200 Temporary Revision AWL 2–48, dated April 8, 2011, to Section AWL—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 200 Maintenance Program Manual, PSM 1–82–7.

(iv) de Havilland Dash 8 Series 300 Temporary Revision AWL 3–118, dated April 8, 2011, to Section AWL—Systems Maintenance, of Part 2, Airworthiness Limitations, of the Bombardier Dash 8 Series 300 Maintenance Program Manual, PSM 1–83–7.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); Internet <http://www.bombardier.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 22, 2012.

**Ali Bahrami,**

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

[FR Doc. 2012–21102 Filed 8–27–12; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Chapter 1**

[Docket No. FAA–2012–0754]

**Airport Improvement Program (AIP): Policy Regarding Access to Airports From Residential Property; Correction**

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

**ACTION:** Proposed policy; implementation of Section 136; opportunity to comment; correction and extension of time to comment.

**SUMMARY:** The FAA is correcting an inadvertent omission in the Addresses paragraph in the Proposed Policy Regarding Access to Airports From Residential Property that was published in the **Federal Register** on July 30, 2012. The FAA is also extending the comment period to September 14, 2012.

**DATES:** The comment period for the proposed policy document published July 30, 2012 (77 FR 44515), is extended to September 14, 2012.

**FOR FURTHER INFORMATION CONTACT:** Randall S. Fiertz, telephone: (202) 267–3085; facsimile: (202) 267–5257; email: [randall.fiertz@faa.gov](mailto:randall.fiertz@faa.gov).

**SUPPLEMENTARY INFORMATION:****Need for Correction**

On July 30, 2012, the Federal Aviation Administration published a Notice of Proposed Policy in the **Federal Register** at 77 FR 44515 proposing an FAA policy, based on Federal law, concerning through-the-fence access to a federally obligated airport from an adjacent or nearby property, when that property is used as a residence. The Notice also proposed to limit application of the FAA's previously published interim policy (76 FR 15028; March 18, 2011) to commercial service airports that certified existing residential through-the-fence access agreements and rescind applicability of this interim policy with regard to certain general aviation airports consistent with section 136 of Public Law 112–95. In addition, that notice described how the FAA will interpret provisions of the law pertaining to

residential through-the-fence access and invited comments.

There was an inadvertent omission in the Notice which FAA is correcting through this amendment. In the Addresses paragraph, the FAA inadvertently omitted the applicable Department of Transportation Docket Number.

#### Correction

In the document published on July 30, 2012 (77 FR 44515) FR Doc. 2010–18058, on page 44515 in column 3, under the heading **ADDRESSES** paragraph of this document, replace “Docket Number FAA–2012–XXX” with “Docket Number FAA–2012–0754”.

#### Extension of Time To Comment

The Experimental Aircraft Association requested the FAA extend the comment period an additional two weeks. The FAA believes this is a reasonable request and hereby extends the comment period to September 14, 2012.

Dated: Issued in Washington, DC, on August 22, 2012.

**Randall S. Fiertz,**

*Director, Airport Compliance and Management Analysis.*

[FR Doc. 2012–21147 Filed 8–27–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 21

[Docket No. FDA–2011–N–0252]

#### Office of the Secretary

#### 45 CFR Part 5b

#### Privacy Act, Exempt Record System

**AGENCY:** Office of the Secretary, Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS) will be implementing a new system of records, 09–10–0020, “FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC.” HHS/FDA proposes to exempt this system of records from certain requirements of the Privacy Act to protect the integrity of FDA’s scientific misconduct inquiries and investigations and to protect the identity of confidential sources in such investigations.

**DATES:** Submit either electronic or written comments by November 13, 2012. If HHS/FDA receives any significant adverse comments, the Agency will publish a document withdrawing the direct final rule within 30 days after the comment period ends. HHS/FDA will then proceed to respond to comments under this proposed rule using the usual notice and comment procedures.

**ADDRESSES:** You may submit comments, identified by Docket No. FDA–2011–N–0252, by any of the following methods:

#### Electronic Submissions

Submit electronic comments in the following way:

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

#### Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (For paper or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**Instructions:** All submissions received must include the Agency name and docket number for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the “Request for Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Frederick Sadler, Division of Freedom of Information, Office of Public Information & Library Services, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–796–8975, [Frederick.Sadler@fda.hhs.gov](mailto:Frederick.Sadler@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

FDA is implementing a new system of records called the “FDA Records Related to Research Misconduct

Proceedings.” The purpose of this system of records is to implement FDA’s responsibilities for addressing research integrity and misconduct, in accordance with the Public Health Service (PHS) Policies on Research Misconduct (42 CFR part 93), for research performed by persons who are FDA employees, agents of the Agency, or who are affiliated with the Agency by contract or agreement. The term “research misconduct” is defined at 42 CFR 93.103 to mean “fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.” The general policy of the PHS Policies on Research Misconduct is that “Research misconduct involving PHS support is contrary to the interests of the PHS and the Federal government and to the health and safety of the public, to the integrity of research, and to the conservation of public funds.” (42 CFR 93.100(a)). The PHS Policies on Research Misconduct provide for a number of HHS administrative actions that can be taken in response to a research misconduct proceeding, such as the suspension of a contract, debarment, or an adverse personnel action against a Federal employee (42 CFR 93.407). In addition, under 42 CFR 93.401, FDA shall at any time during a research misconduct proceeding notify HHS’ Office of Research Integrity (ORI) immediately to ensure that FDA’s Office of Criminal Investigations, HHS Office of Inspector General, the Department of Justice, or other appropriate law enforcement Agencies, are notified if there is a reasonable indication of possible violations of civil or criminal law.

FDA’s new system of records will be modeled after the system of records maintained by ORI, entitled “HHS Records Related to Research Misconduct Proceedings, HHS/OPHS/ORI” System No. 09–37–0021 (59 FR 36717, July 19, 1994; revised most recently at 75 FR 44847, August 31, 2009).

FDA’s scientific misconduct inquiry and investigation records are located in the Office of the Chief Scientist in FDA’s Office of the Commissioner. FDA is preparing to organize and operate these records as a “system of records” as that term is defined by the Privacy Act. FDA is publishing a System of Records Notice (SORN) for this system in the **Federal Register** contemporaneous with publication of this proposed rule.

Under the Privacy Act (5 U.S.C. 552a), individuals have a right of access to information pertaining to them which is contained in a system of records. At the same time, the Privacy Act permits certain types of systems to be exempt

from some of the Privacy Act requirements. For example, section 552a(k)(2) of the Privacy Act allows Agency heads to exempt from certain Privacy Act provisions a system of records containing investigatory material compiled for law enforcement purposes. This exemption's effect on the record access provision is qualified in that if the maintenance of the material results in the denial of any right, privilege, or benefit that the individual would otherwise be entitled to by Federal law, the individual must be granted access to the material except to the extent that the access would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. In addition, section 552a(k)(5) of the Privacy Act permits an Agency to exempt investigatory material from certain Privacy Act provisions where such material is compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

As stated previously in this document, FDA may take administrative action in response to a research misconduct proceeding and, where there is a reasonable indication that a civil or criminal fraud may have taken place, will refer the matter to the appropriate investigative body. As such, FDA scientific misconduct inquiry and investigative files are records compiled for law enforcement purposes, and the subsection (k)(2) exemption is applicable to this system of records. Moreover, where misconduct inquiry and investigative files are compiled solely for the purpose of making determinations as to the suitability for appointment as special Government employees or eligibility for Federal contracts from PHS Agencies, the subsection (k)(5) exemption is applicable.

HHS/FDA is therefore proposing to exempt this system under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, access and amendment provisions of the Act (subsections (c)(3), (d)(1) to (d)(4), (e)(4)(G) and (e)(4)(H), and (f)). As described in the following paragraphs, the exemptions are necessary in order to maintain the integrity of the research misconduct proceedings and to ensure that FDA's

efforts to obtain accurate and objective information will not be hindered. However, consideration would be given to requests for notification, access, and amendment that are addressed to FDA's Research Integrity Officer (System Manager) or Privacy Act Coordinator. The specific rationales for applying each of these exemptions are as follows:

- *Subsection (c)(3)*. An exemption from the requirement to provide an accounting of disclosures is needed during the pendency of a research misconduct proceeding. Release of an accounting of disclosures to an individual who is the subject of a pending research misconduct assessment, inquiry or investigation could prematurely reveal the nature and scope of the assessment, inquiry or investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding.

- *Subsection (d)(1)*. An exemption from the access requirement is needed both during and after a research misconduct proceeding, to avoid revealing the identity of any source who was expressly promised confidentiality. Only material that would reveal a confidential source will be exempt from access. Protecting the identity of a source is necessary when the source is unwilling to report possible research misconduct because of fear of retaliation (e.g., from an employer or coworkers).

- *Subsections (d)(2) through (d)(4)*. An exemption from the amendment provisions is necessary while one or more related research misconduct proceedings are pending. Allowing amendment of investigative records in a pending proceeding could interfere with that proceeding; even after that proceeding is concluded, an amendment could interfere with other pending or prospective research misconduct proceedings, or could significantly delay inquiries or investigations in an attempt to resolve questions of accuracy, relevance, timeliness, and completeness.

- *Subsection (e)(4)(G) and (e)(4)(H)*. An exemption from the notification provisions is necessary during the pendency of a research misconduct proceeding, because notifying an individual who is the subject of an assessment, inquiry, or investigation of the fact of such proceedings could prematurely reveal the nature and scope of the proceedings and result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding.

- *Subsection (f)*. An exemption from the requirement to establish procedures for notification, access to records, amendment of records, or appeals of denials of access to records, is appropriate because the procedures would serve no purpose in light of the other exemptions, to the extent that those exemptions apply.

As stated previously in this document, FDA's new system of records will be modeled after the system of records maintained by ORI. ORI has exempted these records under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, access, accounting, and amendment provisions of the Privacy Act, to ensure that these records will not be disclosed inappropriately (59 FR 36717, July 19, 1994). Likewise, FDA believes that exempting the new system, "FDA Records Related to Research Misconduct Proceedings, HHS/FDA," from the same Privacy Act provisions is essential to ensure that material in FDA's files related to research misconduct proceedings is not disclosed inappropriately. Except for information that would reveal the identity of a source who was expressly promised confidentiality, the access exemption will not prohibit HHS/FDA from granting respondents' access requests consistent with the PHS Policies on Research Misconduct (42 CFR Part 93), including in those cases in which a finding of research misconduct has become final and an administrative action has been imposed.

## II. Companion Document to Direct Final Rulemaking

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides the procedural framework to proceed with standard notice-and-comment rulemaking if the direct final rule receives significant adverse comment and is withdrawn. FDA is publishing the direct final rule because we believe the rule is noncontroversial and we do not anticipate receiving any significant adverse comments.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment

raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a significant adverse comment. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received on this companion proposed rule will also be treated as comments on the direct final rule. We will not provide additional opportunity for comment.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this companion proposed rule. Instead, we will publish a document confirming the effective date within 30 days after the comment period ends, and we intend the direct final rule to become effective 30 days after publication of the confirmation notice.

If FDA receives any significant adverse comments, the Agency will withdraw the direct final rule within 30 days after the comment period ends and proceed to respond to all of the comments under this companion proposed rule using usual notice-and-comment rulemaking procedures. The Agency will address the comments in a subsequent final rule.

A full description of FDA's policy on direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466). The guidance document may be accessed at: <http://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm>.

### III. Analysis of Impacts

HHS/FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563

direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule imposes no duties or obligations on small entities, the Agency proposes to certify that the final rule would not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

### IV. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects

21 CFR Part 21

Privacy.

45 CFR Part 5b

Privacy.

Therefore, the Department of Health and Human Services is proposing to amend 21 CFR part 21 and 45 CFR part 5b to read as follows:

### Title 21

#### PART 21—PROTECTION OF PRIVACY

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

**Authority:** 21 U.S.C. 371; 5 U.S.C. 552, 552a.

2. Section 21.61 is amended by adding paragraph (d) to read as follows:

#### § 21.61 Exempt systems.

\* \* \* \* \*

(d) Records in the following Food and Drug Administration Privacy Act Records Systems are exempt under 5 U.S.C. 552a(k)(2) and (k)(5) from the provisions enumerated in paragraph (a)(1) through paragraph (a)(3) of this section: FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC, 09–10–0020.

### Title 45

#### PART 5b—PRIVACY ACT REGULATIONS

3. The authority citation for 45 CFR part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

4. Section 5b.11 is amended by adding paragraph (b)(2)(vii)(C) to read as follows:

#### § 5b.11 Exempt systems.

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*  
(vii) \* \* \*

(C) FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC.

\* \* \* \* \*

Dated: July 20, 2012.

**Kathleen Sebelius,**

*Secretary of Health and Human Services.*

[FR Doc. 2012–20890 Filed 8–27–12; 8:45 am]

**BILLING CODE 4160–01–P**

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG–2012–0594]

RIN 1625–AA08

#### Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Poquoson Seafood Festival Workboat Races, Back River; Poquoson, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily change the enforcement period of special local regulations for one recurring marine event in the Fifth Coast Guard District. This event is the Poquoson Seafood Festival Workboat Race, which includes a series of boat races to be held on the waters of Back River, Poquoson, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic during the power boat races on the Back River in the vicinity of Messick Point, in Poquoson, Virginia.

**DATES:** Comments and related material must be received by the Coast Guard on or before September 15, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG–2012–0594 using any one of the following methods:

(1) *Federal eRulemaking Portal:*  
<http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email [Hector.L.Cintron@uscg.mil](mailto:Hector.L.Cintron@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Acronyms**

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

##### **A. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted

without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### **1. Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG–2012–0594) in the “SEARCH” box and click “SEARCH.” Click on “Submit a Comment” on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

##### **2. Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG–2012–0594) in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

##### **3. Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### **4. Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **B. Regulatory History and Information**

This rule involves an annually occurring marine event that takes place on the 2nd Sunday in October, as published in table to 33 CFR 100.501. The City of Poquoson has requested that the enforcement dates be changed for this year’s event.

##### **C. Basis and Purpose**

The City of Poquoson sponsors an annual workboat race which takes place on the navigable waters of the Back River in Poquoson, Virginia. This event occurs in connection with the city’s annual seafood festival. A special local regulation is effective annually to create a safety zone for the workboat races.

The regulation listing annual marine events within the Fifth Coast Guard District and corresponding dates is 33 CFR 100.501. The Table to § 100.501 identifies marine events by Captain of the Port zone. This particular marine event is listed in section (c.), line No. 19 of the table.

The current regulation described in section (c.) line No. 19 of the table indicates that the workboat race event should take place this year on October 7, 2012 (the Second Sunday in October). This regulation proposes to change the date for the event to take place on September 30, 2012 for this year only.

A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of the participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area. The regulated area as described in 33 CFR 100.501 will be enforced from 1 p.m. to 4 p.m. September 30, 2012, or, in the case of inclement weather, from 1 p.m. to 4

p.m. on October 7, 2012. During this enforcement period, vessels may not enter or remain in the regulated area unless they receive permission from the Coast Guard Patrol Commander.

#### D. Discussion of Proposed Rule

The Coast Guard proposes to temporarily suspend the regulation listed at section (c.) line No. 19 in the Table to § 100.501 and insert this new temporary regulation at the Table to § 100.501 line No. 25 in order to reflect the change of date for this year's event. This change is needed to accommodate the change in date of the annual Seafood Festival Workboat Race Event. No other portion of the Table to § 100.501 or other provisions in § 100.501 shall be affected by this regulation.

This special local regulation will restrict vessel movement in the regulated area during the marine event. The regulated area is needed to control vessel traffic and enhance the safety of participants and spectators of the Poquoson Seafood Festival Workboat Race. The regulation will be enforced from 1 p.m. to 4 p.m. on September 30, 2012 or if necessary due to inclement weather from 1 p.m. to 4 p.m. on October 7, 2012. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period.

In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts

#### E. Regulatory Analyses

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

##### 1. Regulatory Planning and Review

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

Although this rule prevents traffic from transiting a portion of certain waterways during specified events, 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. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR § 100.501, Table to § 100.501.

##### 2. Impact on 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 in this section of the Back River during the event from 1 p.m. to 4 p.m. on September 30, 2012.

Although this regulation prevents traffic from transiting a portion of the Back River during the event, this rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, the Coast Guard 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.

##### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business,

organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

##### 4. Collection of Information

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

##### 5. Federalism

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

##### 6. Protest Activities

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

##### 7. Unfunded Mandates Reform Act

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

##### 8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply,

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

13. Technical Standards

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

14. Environment

We have analyzed this 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 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. Under figure 2-1, paragraph (34)(h), of the Instruction, 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 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. In § 100.501, in the Table to § 100.501, temporarily suspend line (c)19.

3. In § 100.501, in the Table to § 100.510, add temporary line 23 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

\* \* \* \* \*

(C.) COAST GUARD SECTOR HAMPTON ROADS—COTP ZONE

Table with 5 columns: No., Date, Event, Sponsor, Location. Row 23: September 30, 2012 or in the case of inclement weather October 7, 2012. Poquoson Seafood Festival Workboat Races. City of Poquoson. The waters of the Back River, Poquoson, Virginia, bounded on the north by a line drawn along latitude 37°06'30" N, bounded on the south by a line drawn along latitude 37°06'15" N, bounded on the east by a line drawn along longitude 076°18'52" W and bounded on the west by a line drawn along longitude 076°19'30" W.

Dated: August 1, 2012. John K. Little, Captain, U.S. Coast Guard, Captain of the Port Hampton Roads. [FR Doc. 2012-21211 Filed 8-27-12; 8:45 am] BILLING CODE 9110-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 5b

[Docket Number NIH-2011-0001]

Privacy Act; Implementation

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS or Department), through the National Institutes of Health (NIH), is implementing a new system of records, 09-25-0223, "NIH Records Related to Research Misconduct Proceedings, HHS/NIH." HHS is exempting this system of records from certain requirements of the Privacy Act to protect the integrity of NIH research misconduct proceedings and to protect the identity of confidential sources in

such proceedings. Elsewhere in this issue of the **Federal Register**, HHS is issuing a direct final rule for this action because the agency expects that there will be no significant adverse comment on this rule. HHS is publishing this companion proposed rule under the agency's usual procedure for notice-and-comment rulemaking, to provide a procedural framework to finalize the rule in the event the agency publishing this companion proposed rule under the agency's usual procedure for notice-and-comment rulemaking, to provide a procedural framework to finalize the rule in the event the agency receives any significant comments and withdraws the direct final rule. The direct final rule and this companion proposed rule are substantively identical.

**DATES:** Submit either electronic or written comments by November 13, 2012. If HHS/NIH receives any significant adverse comments, the agency will publish withdrawing the direct final rule within 30 days after the comment period ends. HHS/NIH will then proceed to respond to comments under this proposed rule using the usual notice and comment procedures.

**ADDRESSES:** You may submit comments, identified by [Docket No(s).], by any of the following methods:

#### *Electronic Submissions*

Submit electronic comments in the following way:

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

#### *Written Submissions*

Submit written submissions in the following ways:

- *Fax:* 301-402-0169.
- *Mail:* Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852-7669.

To ensure a more timely processing of comments, HHS/NIH is no longer accepting comments submitted to the agency by email. HHS/NIH encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

*Instructions:* All submissions received must include the agency name and Docket No. for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and follow the instructions provided for conducting a search, using the docket number(s) found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852-7669, telephone 301-496-4607, fax 301-402-0169, email [jm40z@nih.gov](mailto:jm40z@nih.gov).

**SUPPLEMENTARY INFORMATION:** NIH is implementing a new system of records called, "NIH Records Related to Research Misconduct Proceedings" (09-25-0223). This system of records is part of NIH's implementation of its responsibilities under the Public Health Service (PHS) Policies on Research Misconduct, 42 CFR part 93. The system notice applies to alleged or actual research misconduct involving research: (1) Carried out in NIH facilities by any person; (2) funded by the NIH Intramural Research Program (IRP) in any location; or (3) undertaken by an NIH employee or trainee as part of his or her official NIH duties or NIH training activities, regardless of location. A person who, at the time of the alleged or actual research misconduct, was employed by, was an agent of, or was affiliated by contract, agreement, or other arrangement with NIH, is covered by the system if, for example, he or she is involved in: (1) NIH- or PHS-supported biomedical or behavioral research; (2) NIH- or PHS-supported biomedical or behavioral research training programs; (3) NIH- or PHS-supported activities that are related to biomedical or behavioral research or research training, such as the operation of tissue and data banks and the dissemination of research information; (4) plagiarism of research records produced in the course of NIH- or PHS-supported research, research training or activities related to that research or research training; or (5) an application or proposal for NIH or PHS support for biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information (regardless of whether it is approved or funded).

The term "research misconduct" is defined at 42 CFR 93.103 to mean "fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research

results." The general policy of the PHS Policies on Research Misconduct is that "Research misconduct involving PHS support is contrary to the interests of the PHS and the Federal government and to the health and safety of the public, to the integrity of research, and to the conservation of public funds." 42 CFR 93.100(a). The PHS Policies on Research Misconduct provide for a number of HHS administrative actions that can be taken in response to a research misconduct proceeding, such as an adverse personnel action against a federal employee, the suspension of a contract, or debarment. 42 CFR 93.407. In addition, pursuant to 42 CFR 93.318 and 93.401, NIH shall at any time during a research misconduct proceeding notify the HHS Office of Research Integrity (ORI) immediately to ensure that NIH's Office of Management Assessment, HHS' Office of Inspector General, the Department of Justice, or other appropriate law enforcement agencies are notified and consulted, if there is a reasonable indication of possible violations of civil or criminal law that may involve such offices.

NIH's system of records is modeled after the system of records maintained by ORI, entitled "HHS Records Related to Research Misconduct Proceedings, HHS/OS/ORI" System No. 09-37-0021 (59 FR 36717, July 19, 1994; revised most recently at 74 FR 44847, Aug. 31, 2009).

NIH's records related to research misconduct proceedings are located in the Office of Intramural Research in NIH's Office of the Director. NIH is updating its organization and operation of these records, to be exempt from Privacy Act requirements, as provided in the direct final rule and in a new "System of Records Notice" which NIH is publishing in the **Federal Register** for public comment contemporaneously with or soon after publication of this companion proposed rule.

Under the Privacy Act (5 U.S.C. 552a), individuals have a right of access to information pertaining to them which is contained in a system of records. At the same time, the Act permits certain types of systems to be exempt from some of the Privacy Act requirements, including the access requirement. For example, section 552a(k)(2) allows agency heads to exempt from certain Privacy Act provisions a system of records containing investigatory material compiled for law enforcement purposes. This exemption's effect on the access requirement is qualified in that if the maintenance of the material results in the denial of any right, privilege, or benefit that the individual would be otherwise entitled to by Federal law, the

individual must be granted access to the material unless the access would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. In addition, section 552a(k)(5) permits an agency to exempt investigatory material from certain Privacy Act provisions where such material is compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

As stated above, NIH may take administrative action in response to a research misconduct proceeding and, where a civil or criminal fraud may have taken place, NIH may refer the matter to the appropriate investigative body. As such, NIH's records related to research misconduct proceedings are compiled for law enforcement purposes, and the subsection (k)(2) exemption is applicable to this system of record. Moreover, where records related to research misconduct proceedings are compiled solely for the purpose of making determinations as to the suitability for appointment as special government employees or eligibility for Federal contracts from PHS agencies, the subsection (k)(5) exemption is applicable.

Exempting the system from Privacy Act provisions pertaining to providing an accounting of disclosures, access and amendment, notification, and procedures and rules is necessary to maintain the integrity of the research misconduct proceedings and to ensure that the NIH's efforts to obtain accurate and objective information will not be hindered.

Accordingly, HHS/NIH is exempting this system under subsections (k)(2) and (k)(5) of the Privacy Act from the accounting, access, and amendment, notification and procedures and rules provisions of the Privacy Act (paragraphs (c)(3), (d)(1)–(4), (e)(4)(G) and (H), and (f)) for the reasons stated below. However, consideration will be given to requests for notification, access, and amendment that are addressed to the System Manager. The specific rationale for exempting the system from each of these provisions is as follows:

- Subsection (c)(3). An exemption from the requirement to provide an accounting of disclosures is needed during the pendency of a research misconduct proceeding. Release of an

accounting of disclosures to an individual who is the subject of a pending research misconduct assessment, inquiry or investigation could prematurely reveal the nature and scope of the assessment, inquiry or investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding.

- Subsection (d)(1). An exemption from the access requirement is needed both during and after a research misconduct proceeding, to avoid revealing the identity of any source who was expressly promised confidentiality. Only material that would reveal a confidential source will be exempt from access. Protecting the identity of a source is necessary when the source is unwilling to come forward and report possible research misconduct because of fear of retaliation (e.g., from an employee or co-worker).

- Subsections (d)(2) through (d)(4). An exemption from the amendment provisions is necessary while one or more related research misconduct proceedings are pending. Allowing amendment of investigative records in a pending proceeding could interfere with that proceeding; even after that proceeding is concluded, an amendment could interfere with other pending or prospective research misconduct proceedings, or could significantly delay inquiries or investigations in an attempt to resolve questions of accuracy, relevance, timeliness, and completeness.

- Subsections (e)(4)(G) and (H). An exemption from the notification provisions is necessary during the pendency of a research misconduct proceeding, because notifying an individual who is the subject of an assessment, inquiry, or investigation of the fact of such proceedings could prematurely reveal the nature and scope of the proceedings in a manner that could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the proceeding.

- Subsection (f). An exemption from this requirement to establish procedures for notification, access to records, amendment of records, or appeals of denials of access to records, is necessary because the procedures would serve no purpose in light of the other exemptions, to the extent that those exemptions apply.

As stated above, NIH's system of records is modeled after the system of records maintained by HHS' Office of Research Integrity (ORI). ORI has

exempted these records under subsections (k)(2) and (k)(5) of the Privacy Act from the notification, accounting, access, and amendment provisions of the Privacy Act, to ensure that these investigative files will not be disclosed inappropriately [59 FR 36717 (July 19, 1994)]. Likewise, NIH believes that exempting the new system, "NIH Records Related to Research Misconduct Proceedings, HHS/NIH," from the Privacy Act provisions is essential to ensure that material in NIH's files related to research misconduct proceedings is not disclosed inappropriately. Except for information that would reveal the identity of a source who was expressly promised confidentiality, the access exemption will not prohibit HHS/NIH from granting respondents' access requests consistent with the PHS Policies on Research Misconduct (42 CFR Part 93), including in those cases in which a finding of research misconduct has become final and an administrative action has been imposed.

#### Analysis of Impacts

HHS/NIH has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that the final rule is not a significant regulatory action under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule imposes no duties or obligations on small entities, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is \$136

million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. NIH does not expect that a final rule consistent with this NPRM would result in any 1-year expenditure that would meet or exceed this amount.

#### List of Subjects in 45 CFR Part 5b

Privacy.

For the reasons set out in the preamble, the Department proposes to amend its Privacy Act Regulations, Part 5b of 45 CFR Subtitle A, as follows:

#### PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for Part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

2. In § 5b.11, add paragraph (b)(2)(vii)(D) to read as follows:

#### § 5b.11 Exempt systems

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vii) \* \* \*

(D) NIH Records Related to Research Misconduct Proceedings, HHS/NIH, 09–25–0223.

Dated: July 20, 2012.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2012–20887 Filed 8–27–12; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 204

RIN 0750–AH80

#### Defense Federal Acquisition Regulation Supplement: Clarification of “F” Orders in the Procurement Instrument Identification Number Structure (DFARS Case 2012–D040)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update instructions for assigning basic and supplementary procurement instrument identification numbers.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before

October 29, 2012, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2012–D040, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2012–D040” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2012–D040.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2012–D040” on your attached document.

○ *Email:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2012–D040 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Veronica Fallon, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Veronica Fallon, telephone 571–372–6087.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to revise the DFARS to eliminate the requirement to utilize an “F” in the 9th position of the procurement instrument identification number (PIIN) to identify awards to certain vendors, including AbilityOne and Federal Prison Industries (UNICOR), and to other Government organizations. These vendors are uniquely identified today by their DUNS number and/or CAGE code and, therefore, associated contract actions are easily tracked. There is no longer any need for DoD to uniquely identify contract actions with these vendors. Under the proposed rule, contract actions with these vendors will be treated and identified in the same manner as those with any other vendor. This change proposes to limit the use of “F” in the 9th position of the PIIN to those task and delivery orders issued under a non-DoD issued contract or agreement. It is anticipated that this proposed change, which further

standardizes DoD procedures, will also reduce data errors and interoperability problems throughout the Department’s business processes.

##### II. Discussion and Analysis

DoD is proposing the following changes to the DFARS:

- Revise 204.7003, Basic PII number, paragraph (a)(3), Position 9, by—
  - Deleting from subparagraph (iii) instrument type C, the exception for contracts placed with or through other Government departments or agencies;
  - Deleting from subparagraph (vi) instrument type F, contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD (including actions from nonprofit agencies employing people who are blind or severely disabled (AbilityOne), and the Federal Prison Industries (UNICOR));
  - Providing at subparagraph (vi) instrument type F direction for its use with blanket purchase agreement calls, orders under contracts, including Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts, basic ordering agreements issued by departments or agencies outside of DoD; and
- Revising 204.7004, Supplementary PII numbers, paragraph (d)(2)(ii) by providing direction to use “F” in position 9 for calls against blanket purchase agreements and orders placed under non-DoD issued contracts including Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts, or basic ordering agreements. The proposed text also directs that a supplementary PII number with an “F” in the 9th position is to be used only once, and not for more than one order.

##### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and

Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it applies to a narrowly limited population of contract actions. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule would affect how DoD contracting officers assign Procurement Instrument Identification Numbers (PIINs) to procurement actions. The proposed rule does not impact small entities as it only impacts the internal operating procedures of the Government by specifying how the assigned PIIN is constructed for certain procurement actions. This change would limit the use of "F" in the 9th position to those calls or orders issued under non-DoD issued contracts, basic ordering agreements, or blanket purchase agreements. As a result of the proposed rule, new awards under the AbilityOne program and the Federal Prison Industries program would no longer reflect an "F" in the PIIN.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no significant alternatives to accomplish the stated objectives of this rule. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2012-D040) in the correspondence.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 204

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 204 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 204 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.7003(a)(3) is amended by revising paragraphs (iii) and (vi) to read as follows:

204.7003 Basic PII number.

(a) \* \* \*

(3) \* \* \*

(iii) Contracts of all types except indefinite-delivery contracts, sales contracts, and short form research contracts. Do not use this code for contracts or agreements with provisions for orders or calls—C

\* \* \* \* \*

(vi) Calls against blanket purchase agreements and orders under contracts (including Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts) and basic ordering agreements issued by departments or agencies outside DoD. Do not use the F designation on DoD-issued purchase orders, contracts, agreements, or orders placed under DoD-issued contracts or agreements—F

\* \* \* \* \*

3. Section 204.7004(d)(2) is amended by revising paragraph (ii) to read as follows:

204.7004 Supplementary PII numbers.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) If an office is placing calls against blanket purchase agreements or orders under non-DoD issued contracts (including Federal Supply Schedules, Governmentwide acquisition contracts, and multi-agency contracts), or basic ordering agreements, the office shall identify the instrument with a 13 position supplementary PII number using an F in the 9th position. Do not use the same supplementary PII number with an F in the 9th position on more than one order. Modifications to these calls or orders shall be numbered in accordance with paragraph (c) of this section.

\* \* \* \* \*

[FR Doc. 2012-21052 Filed 8-27-12; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2011-0012; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Bay Skipper as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Bay skipper (Euphyes bayensis) as an endangered or threatened species under the Endangered Species Act of 1973, as amended, and to designate critical habitat. After review of the best available scientific and commercial information, we find that listing the Bay skipper is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the Bay skipper or its habitat at any time.

DATES: The finding announced in this document was made on August 28, 2012.

ADDRESSES: This finding is available on the Internet at http://

www.regulations.gov at Docket Number FWS-R4-ES-2011-0012. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Mississippi Field Office (see ADDRESSES); by telephone 601-321-1122, or by facsimile 601-965-4340 if you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 et seq.), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be

warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. We must publish these 12-month findings in the **Federal Register**.

#### Previous Federal Actions

The Bay skipper was identified as a candidate for protection under the Act in the November 21, 1991, **Federal Register** (56 FR 58804). It was assigned a Category 2 status designation, which was given to those species for which there was some evidence of vulnerability, but for which additional biological information was needed to support a proposed rule to list as an endangered or threatened species. Assigning categories to candidate species was discontinued in 1996 (Notice of Candidate Review; February 28, 1996; 61 FR 7596), and only species for which the Service has sufficient information on biological vulnerability and threats to support issuance of a proposed rule are now regarded as candidate species. Due to a lack of information on the Bay skipper, it was no longer considered as a candidate species as of 1996.

On January 4, 2010, we received a petition dated December 29, 2009, from WildEarth Guardians and Xerces Society for Invertebrate Conservation requesting that the Bay skipper be listed as an endangered or threatened species and critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). In a January 25, 2010, letter to the petitioners, we acknowledged receipt of the petition, and stated that due to prior workload and limited funding, we would not be able to address the petition at that time, but would complete the action when workload and funding allowed. On May 6, 2010, we received a 60-day notice of intent (NOI) to sue under the provisions of the Act from petitioners for our alleged failure to make a finding within 90 days of receipt of the petition. In a June 11, 2010, letter to the petitioners, we acknowledged receipt of the NOI and stated that a publication date for the 90-day finding could not be predicted at

that time. Funding became available during fiscal year 2011, and on July 12, 2011, we published a 90-day finding (76 FR 40868) that the petition presented substantial scientific or commercial information indicating that listing this species may be warranted, and requested scientific and commercial data and other information regarding this species. This notice constitutes the 12-month finding on the January 4, 2010, petition to list the Bay skipper as an endangered species.

#### Species Information

The Bay skipper, a small butterfly, was described as *Euphyes bayensis* by Shuey (1989) from Bay St. Louis, Hancock County, Mississippi. Shuey (1993) reported on the phylogeny (the history of the evolution of a species) within the *Euphyes* genus, finding that *E. bayensis* is a species in the *Euphyes dion* complex. During our status review, we received comments from Texas Parks and Wildlife Department (TPWD) questioning the taxonomic validity of the Bay skipper, particularly the lack of quantitative morphological studies of Texas populations (TPWD 2011). While we agree that additional studies would be useful, the species has been appropriately described, and all subsequent peer-reviewed taxonomic treatments and collection accounts consider the taxon as valid (e.g., Gatrell 2000, p. 4; Pelham 2008, p. 93; Marks 2011a, pp. 92–94).

The Bay skipper has a wingspan of 1.5 to 1.75 inches (in) (3.7 to 4.4 centimeters (cm)). Males are black with a large orange patch on the top of the wings, and have a prominent black stigma (defined mark) on the forewing. The females are dark brown with yellow spots on their forewing and a yellow streak on their hindwing. The ventral (bottom) sides of both front and hind wings of the females are a shade of brown that is paler than the dorsal (upper) side, and have pale yellow spots on the forewing, with two yellow streaks from the base to the margin (Shuey 1989, p. 165; Vaughan and Shepherd 2005, pp. 1–2; Butterflies and Moths of North America (BMNA) 2009, p. 1). The Bay skipper is similar in appearance to the Dion skipper (*Euphyes dion*), but is distinguished by a brighter shade of orange and narrower black borders on the dorsal (top) side of the wings (Shuey 1989, p. 166).

The life history and habitat requirements of the Bay skipper are poorly known. Bay skippers appear to have two major flight periods (late spring and fall), and the potential to produce two generations per year. The gap between the flight periods suggests

that the larvae produced during the spring flight period may aestivate (become dormant) in the summer. The species may overwinter (hibernate) in the larval form. Aestivating and hibernating larvae are probably in the third or fourth instar (period between molts) (Vaughan and Shepherd 2005, p. 2).

Bay skippers have been observed only in association with estuarine herbaceous marsh, including brackish and freshwater marshes. The larval food plant is unknown, but *Cladium* sp. (sawgrass), *Phragmites* sp. (reeds), and *Schoenopletus* sp. (bulrush) are potential larval host plants (NatureServe 2009 as cited in WildEarth Guardians and Xerces Society for Invertebrate Conservation, p. 7; Salvato 2011, p. 14). Adults have been observed feeding on a variety of nectar-producing plants adjacent to wetlands, including *Solidago* sp. (goldenrod), *Verbena brasiliensis* (Brazilian vervain), and *Lippia* sp. (frog fruit) (Marks 2011a, pp. 92–94; Marks 2011b).

Until recently, the Bay skipper was considered to occur in only two locations: Bay St. Louis, Hancock County, Mississippi, and the Anahuac National Wildlife Refuge (NWR) (part of the Texas Chenier Plains NWR Complex), Chambers and Jefferson Counties, Texas. The lack of records suggested that the species had a very limited range and was very rare (Vaughan and Shepherd 2005, p. 2; NatureServe 2009, 2011). The Bay St. Louis locality was severely damaged by Hurricane Katrina in 2005, and it was unknown if the species continued to survive in that locality. The Anahuac NWR and surrounding areas were inundated by Hurricane Ike in 2008, and no Bay skippers had since been reported at that location (NatureServe 2011, WildEarth Guardians and Xerces Society for Invertebrate Conservation 2009, p. 9).

As part of the status review following the 90-day finding, we contacted lepidopterists along the Gulf Coast for additional records, photographs, specimens, and other information on the distribution and abundance of the Bay skipper. We also conducted a 1-week survey for the Bay skipper at the two known localities, and other potentially suitable habitat along the Gulf Coast between Galveston Bay, Texas, and Sandestin, Florida (Salvato 2011 pp. 1–28). No Bay skippers were found on the Anahuac NWR, or at the type locality in Bay St. Louis. However, we were able to identify seven additional localities where Bay skippers have been recently sighted, two in Texas and five in Cameron Parish, Louisiana. These new

localities were documented by publication (Gatrelle 2000, p. 4; Marks 2011a, pp. 92–94; Marks 2011b; Salvato 2011, p. 15), photographs, pinned specimens, and observation of the species during the 2011 survey (Salvato 2011 pp. 1–14). Recent sightings at an additional three locations in Cameron Parish, Louisiana, were unconfirmed (Salvato 2011, pp. 1–3). All of the new confirmed sites are within or adjacent to wildlife refuges (Texas Point NWR, Sabine NWR, Cameron Prairie NWR, Rockefeller Wildlife Refuge), a State park (Sea Rim State Park), or a nature center (Baytown Nature Center) (Salvato 2011, pp. 1–14).

Our survey and our review of the best available scientific and commercial information demonstrates that efforts to document the Bay skipper have been limited and localized, and the Bay skipper is more widely distributed than previously believed (Salvato 2011, pp. 1–14; Marks 2011a, pp. 92–94). It is likely that additional populations occur along the Gulf Coast, as extensive and apparently suitable estuarine marsh habitats with appropriate nectar and potential host plants were observed at numerous sites on both public and private lands (Salvato 2011, pp. 1–14). Within the currently known range of the Bay skipper (East Texas to Mississippi), there are 10 national wildlife refuges, seven State wildlife refuges, two State parks, one State wetland conservation area, and one national park that contain, protect, and manage for estuarine marsh habitats known to be occupied, or potentially occupied, by the species. Extensive areas of privately owned estuarine marsh habitats are also present, and such habitats are not conducive to development, farming, or other land use practices potentially detrimental to Bay skipper habitat.

#### Summary of Information Pertaining to the Five Factors

Section 4 of the Act and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be an endangered or threatened species based on any of the following five 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.

In making this finding, information pertaining to the Bay skipper in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of a threatened or endangered species under the Act.

In making our 12-month finding on the petition, we considered and evaluated the best available scientific and commercial information.

#### A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Until recently, the Bay skipper was recognized as occurring in only two localized areas: Bay St. Louis, Mississippi, and the Anahuac NWR, Texas (e.g., Vaughan and Shepherd 2005, pp. 1–2; NatureServe 2011). Habitat for the Bay St. Louis, Mississippi, population of the Bay skipper was severely damaged by Hurricane Katrina in 2005, and the Anahuac NWR, Texas, population was inundated by Hurricane Ike in 2008. There was concern that one or both of these populations of the Bay skipper might have been extirpated due to habitat loss or modification by the hurricane activity (WildEarth Guardians and Xerces Society for Invertebrate Conservation 2009, p. 9), and there was additional concern that the species could be extinct.

Given these concerns, we conducted a 1-week survey that included the

historical occurrence locations, as well as multiple points in between, during a week of the September 2011 flight period (Salvato 2011, pp. 1–28). This limited survey failed to locate the species at either of the previously occupied locations of Bay St. Louis, Mississippi, or Anahuac NWR, Texas. However, only a few hours were spent searching each of the historical locations, thus neither the continued presence nor the extirpation of the species from these two sites could be confirmed, as habitat at both locations appeared to be suitable to sustain the species (Salvato 2011, pp. 5–6, 11). As discussed above, the survey did confirm seven extant site locations of the Bay skipper in Chambers and Jefferson Counties, Texas, and in Cameron Parish, Louisiana (Gatrelle 2000, p. 4; Wauer 2006; Marks 2011a, pp. 92–94; Salvato 2011, pp. 1–14).

Although all of the site locations are known to have experienced one or more severe storm events by recent hurricanes (i.e., Hurricane Katrina 2005, Hurricane Rita 2005, Hurricane Gustav 2008, Hurricane Ike 2008), the Bay skipper continues to persist at the 7 newly confirmed locations. The Bay skipper is endemic to, and adapted to, estuarine marsh habitats. Such habitats in the northern Gulf of Mexico are frequently subject to tropical storms and hurricanes, and the area has experienced an increase in storm activity (Goldenberg *et al.* 2001, p. 474–475). Some researchers believe the increase in tropical storm and hurricane intensity, duration, and frequency can be attributed to warming of the Gulf of Mexico's water temperatures (Karl *et al.* 2009, pp. 5–6).

Researchers studying butterfly community response to hurricane and tropical storm events have documented local species declines and extirpations; however, this research has also found that those butterfly species most closely associated with the local vegetation survived and rapidly recovered from periodic storm impacts (Salvato and Salvato 2007, p. 160). Others recovered more gradually. For example, although the endangered Miami blue butterfly (*Cyclargus thomasi bethunebakeri*) declined on Bahia Honda following impacts from hurricanes Dennis, Katrina, and Wilma during 2005, the population returned to pre-storm abundance within 2 years following the storms (Salvato and Salvato 2007, p. 160).

Estuarine plant species that are considered to be utilized by Bay skipper larvae include sawgrass, reeds, and bulrush (Salvato 2011, pp. 1–14). Adult Bay skippers have been observed

feeding on native and exotic flowering plants such as goldenrod, Brazilian vervain, and frog fruit, as well as a variety of other annual and perennial nectar-producing plants adjacent to wetlands (Marks 2011a, pp. 92–94). All of these plants are common or abundant throughout the range of the Bay skipper. These plants are rapid colonizers under appropriate conditions, with seed dispersal occurring via water, wind, or animal transport. All of these plants will rapidly recover from severe storm impacts, as well as colonize new habitats as conditions become appropriate. The discovery of seven new site locations for the Bay skipper, all of which have been recently impacted by hurricane activity, indicates that this butterfly species, and the plants that it utilizes, are adapted to surviving severe storm events.

There are concerns that Bay skipper habitats could be negatively affected by sea level rise (WildEarth Guardians and Xerxes Society for Invertebrate Conservation 2009, p. 9), and that impacts from storm events could be compounded by projected sea level rise (Karl *et al.* 2009, pp. 5–6). Since 2003, global mean sea level rise has been estimated at approximately 2.5 mm (0.10 in)/year (McMullen and Jabbour 2009, p. 26). Estimates of mean sea level trends (including subsidence) along the Gulf of Mexico within the range currently or potentially occupied by Bay skipper vary from 2.1 mm (0.0827 in)/year at Pensacola, Florida, to 9.6 mm (0.378 in)/year at Eugene Island, Louisiana, and 6.84 mm (0.2693 in)/year at Galveston, Texas (National Oceanographic and Atmospheric Administration 2012; see also Mitchum 2011 pp. 8–9). As noted above, during our status review, we obtained information on potential larval host and nectar plant species utilized by the Bay skipper, all of which are widely distributed, adapted to estuarine habitats, and capable of rapidly colonizing new habitats as conditions become appropriate. Additionally, the flight capability of the Bay skipper and its life cycle (e.g., at least two broods per year) provide an ability for the species to accommodate local habitat changes.

During our survey, five of the seven newly recognized butterfly locations were found in Louisiana estuarine marshes. Coastal Louisiana contains the largest estuarine herbaceous marsh in the United States; however, it is also experiencing the highest rate of wetland loss in the country (Couvillion *et al.* 2011, p. 1). While it is likely that some Bay skipper habitats have been detrimentally affected by coastal marsh erosion in Louisiana, potential

curtailment of range cannot be quantified due to the lack of information on historical range and specific habitat. Rates of wetland loss in Louisiana have been decreasing since 1978 (Couvillion *et al.* 2011, p. 12), and the estuarine herbaceous marsh habitat continues to be a dominant feature of the coastal landscape. In addition, multiple projects have been completed, are underway, or are under evaluation in Louisiana to further reduce losses and restore wetlands (see Other Conservation Efforts, below).

There is no available information supporting concerns that land management actions (e.g., livestock grazing, rice farming, land management involving conventional farm machinery, prescribed fires, herbicide use, water control) (WildEarth Guardians and Xerxes Society 2009, pp. 10–11) are negatively affecting the Bay skipper. Estuarine marsh habitats where the Bay skipper have been identified are low-elevation herbaceous wetlands not suitable or utilized directly for grazing or farming, and are generally not subject to impacts by conventional farm machinery. Marshes may be periodically burned; however, fire is a natural component of the estuarine ecosystem, and managed fires are localized, seasonal, and beneficial to Bay skipper estuarine marsh habitats. Due to their low elevations and lack of agricultural potential, estuarine ecosystems are generally not subject to herbicide or pesticide use. As noted in the Background, above, there are multiple State or Federal refuges and protected areas that are managed for estuarine biodiversity. Herbicide and pesticide use in such areas is either restricted or closely managed. For example, on the Anahuac National Wildlife Refuge, herbicides are used only to combat exotic plant species (Cooper, pers. comm. 2010). While highway right-of-ways may be periodically subject to herbicide control measures, this would seasonally affect only a small proportion of the nectaring plants available to butterflies in any given area.

#### Other Conservation Efforts

Following the severe impacts of Hurricanes Katrina and Rita in 2005, the Coastal Protection and Restoration Authority (CPRA) was established by the Louisiana legislature to work with other State agencies, Federal agencies, private industries, and other nongovernmental entities. One of their primary goals is to conserve and restore Louisiana coastal wetlands and their role in hurricane protection. Since 2005, over 200 restoration and protection projects have been constructed, are in

progress, or are proposed (CPRA 2012, pp. 22–25). Projects that protect, enhance, or restore estuarine herbaceous marshes include water and sediment diversions, marsh nourishment, marsh creation, shoreline protection, and hydrologic restoration (CPRA 2012, pp. 115–139).

The National Wildlife Refuge System Improvement Act of 1997 and the Fish and Wildlife Service Manual (601 FW 3, 602 FW 3) require maintaining biological integrity and diversity, comprehensive conservation planning for each refuge, and set standards to ensure that all uses of refuges are compatible with their purposes and the Refuge System's wildlife conservation mission. The comprehensive conservation plan (plan) addresses conservation of fish, wildlife, and plant resources and their related habitats, while providing opportunities for compatible wildlife-dependent recreation uses. An overriding consideration reflected in these plans is that fish and wildlife conservation has first priority in refuge management, and that public use be allowed and encouraged as long as it is compatible with, or does not detract from, the Refuge System mission and refuge purpose(s).

The Texas Chenier Plains National Wildlife Refuge Complex, which includes Anahuac and Texas Point National Wildlife Refuges, and the Southwest Louisiana National Wildlife Refuge Complex, which includes Cameron and Sabine National Wildlife Refuges, encompass most of the known, and much of the potential, habitat for Bay skipper in Texas and Louisiana (see Background, above). Both Refuge complexes have developed plans that prohibit, or closely control, land use management actions which may be harmful to maritime habitats and wildlife species, including the Bay skipper (U.S. Fish and Wildlife Service 2006, 2007, 2008). Currently, the Bay skipper is not specifically named in the plans for each refuge; however, protection is provided to the species indirectly through management of potentially harmful land uses, and the plans can, and will be, amended to incorporate new information on locations and habitat management for Bay skipper (Hunter, pers. comm. 2012).

The Bay skipper is also found on the Rockefeller Wildlife Refuge, managed by the Louisiana Department of Wildlife and Fisheries, and Sea Rim State Park, managed by Texas Parks and Wildlife Department. Management activities on State Parks and Refuges are guided by State Wildlife Action Plans (Louisiana Department of Wildlife and Fisheries

2005, Texas Parks and Wildlife Department 2005), which provide a framework to recognize, manage, and conserve imperiled State wildlife. The Bay skipper is recognized as a species of management concern in the Texas Wildlife Action Plan (Texas Parks and Wildlife Department 2005, p. 59), and will be considered for inclusion in the upcoming revision of the Louisiana Wildlife Action Plan list (Bass, pers. comm. 2012). State Wildlife Action Plans also alert private and corporate landowners of the status, habitats, and general locations of wildlife species of concern, and help ensure consideration of the potential presence of the species and its habitat requirements during Federal and State permit review processes.

#### Summary of Factor A

In summary, we find that while Bay skippers are periodically and locally affected by hurricanes and tropical storms, the species and their habitats are adapted to such events. We find no evidence that the Bay skipper and the maritime plant communities upon which it depends will be unable to shift their distributions to accommodate current rates of sea level rise. Their flight capability, and the production of two generations per year of the Bay skipper, should enable the species to rapidly colonize areas impacted by severe storm events, as well as adjust to maritime habitat shifts that may occur from sea level rise. We also find little evidence that land management actions are now having, or have in the past, had a wide negative effect on the species. Additionally, the magnitude of all of these potential threats to the species has also been reduced by the discovery and recognition of the Bay skipper's wider distribution, and ongoing efforts to protect and enhance estuarine marsh habitats. Therefore, our review of the best available scientific and commercial information does not provide evidence that the present or threatened destruction, modification, or curtailment of habitat and range represents an ongoing and significant threat to the Bay skipper now or in the future.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Rare butterflies and moths can be highly prized by collectors, and an international trade exists for some species for both live and decorative markets, as well as the specialist trade that supplies hobbyists, collectors, and researchers (e.g., Collins and Morris 1985, pp. 155–179; <http://www.>

[theinsectcollector.com/acatalog/specimens\\_real.htm](http://theinsectcollector.com/acatalog/specimens_real.htm)). However, the primary reason that little is known about the Bay skipper, as discussed above, is a lack of scientific or educational collecting in the area it inhabits. While we found some information regarding targeted scientific collecting activity to better document the distribution of the Bay skipper (Salvato 2011, pp. 1–14; Marks 2011a, pp. 92–94; Marks 2011b), our status review did not indicate that any commercial or recreational trade in the species is occurring. Therefore, our review of the best available scientific and commercial information does not indicate that overutilization of the Bay skipper for commercial, recreational, scientific, or educational purposes is a threat to the species now or in the future.

#### C. Disease or Predation

Studies suggest that various diseases and parasites (e.g., baculovirus, *Ophryocystis* sp.) have the potential to negatively impact butterflies (Altizer and Oberhauser 1999, p. 76; Hesketh *et al.* 2010), and butterflies have many natural predators including frogs, lizards, birds, carnivorous insects, and spiders. However, the best available information does not indicate that disease or pathogens are specifically affecting Bay skippers, nor does it provide any evidence regarding the effect of natural predation on Bay skipper populations. The recently confirmed additional populations and a wider range for the Bay skipper reduce any potential vulnerability the species may have to extirpation by disease or predation in the future. Based on our analysis of the best available information, we have determined that neither disease nor predation are significant threats to the Bay skipper now or in the future.

#### D. The Inadequacy of Existing Regulatory Mechanisms

The Bay skipper is classified as an S1 species in both Texas and Mississippi (NatureServe 2011). The S1 designation, based upon the number of occurrences within a State, is considered “critically imperiled—State level” under the NatureServe construct. However, no formal or regulatory consideration is provided to the species or its habitat in Texas or Mississippi as a result of this classification. The Bay skipper has only recently been discovered in Louisiana (Marks 2011a, pp. 92–94; Salvato 2011, pp. 1–15), but receives no formal protections in that State. The Louisiana Natural Heritage Program has been informed of the discovery of the species

in the State, and is currently working to update the NatureServe list to reflect that it has been found in the State (Bass pers. comm. 2012).

As noted under “Other Conservation Efforts,” above, the Louisiana CPRA has been established to work with other State and Federal agencies and nongovernmental entities to protect and restore Louisiana coastal wetlands, which include Bay skipper herbaceous marsh habitats. In addition, Bay skipper populations occurring on National Wildlife Refuges are protected by the National Wildlife Refuge System Improvement Act of 1997 and its implementing regulations, which require maintaining biological integrity and diversity on refuge lands. Bay skipper populations occurring in private estuarine wetland habitats are generally protected under section 404 of the Clean Water Act, which established a project review and permitting process to avoid or minimize wetland impacts, and which requires mitigation of unavoidable impacts.

Therefore, based on our analysis of the best available scientific and commercial information, there is currently no evidence that the inadequacy of existing regulatory mechanisms is a threat to the Bay skipper now or in the future.

#### E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

##### Climate Change Effects

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms “climate” and “climate change” are defined by the Intergovernmental Panel on Climate Change (IPCC). “Climate” refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term “climate change” thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our

analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

#### Rising Sea Levels

As noted under Factor A (above), annual rates of sea level rise along the Gulf of Mexico within the range currently or potentially occupied by Bay skipper vary from 2.1 mm (0.0827 in)/year at Pensacola, Florida, to 9.6 mm (0.378 in)/year at Eugene Island, Louisiana, and 6.84 mm (0.2693 in)/year at Galveston, Texas (National Oceanographic and Atmospheric Administration 2012), and the estuarine plant communities that support the Bay skipper are composed of species that have the ability to rapidly colonize new areas under appropriate conditions and, therefore, can shift their distributions to accommodate currently predicted rates of sea level rise. Additionally, the flight capability of the Bay skipper and its ability to produce two generations per year enable the species to adjust to and exploit estuarine habitat shifts that may occur from gradual sea level rise. Also noted under Factor A (above), is the resilience of estuarine-adapted butterfly species to major storm events subjecting their habitats to inundation. This is supported by the discovery of new populations of Bay skipper (Salvato 2011, pp. 1–15) in areas that have recently been subjected to one or more severe tropical storms (see Background, above). Rising temperatures associated with climate change and rising sea levels may also present new host and nectaring plant opportunities for Bay skipper (e.g., Pateman *et al.* 2012, pp. 1028–1030). Our review of the best available information does not indicate that sea level rise is a significant threat to the species.

#### Increased Intensity and Frequency of Storms

Climate change can cause more frequent and severe storms, including hurricanes. This can have a number of detrimental effects on butterfly populations, including habitat loss, destruction of preferred food and host plants, flooding, and extirpation of affected populations. There is concern that hurricanes may have extirpated Bay skipper populations from Bay St. Louis, Mississippi, and Anahuac NWR, Texas, due to habitat damage and inundation. However, seven new populations of Bay skipper were discovered, all of them in locations that have experienced one or more recent hurricane storm events. This indicates that while severe storms have the potential to negatively affect Bay skipper populations, the species is

capable of recovering from storm damage, even when storms occur closely spaced in time, such as Hurricanes Gustav and Ike in 2008. Salvato and Salvato (2007) noted that butterflies that were quick to recover after severe storms were those species associated with the local vegetation. The Bay skipper is endemic to estuarine marsh habitats and associated with vegetation that is quick to colonize new areas under appropriate conditions, so the Bay skipper is likely capable of recovering quickly from severe storms. The species also has the advantage of producing two generations per year, allowing for faster recolonization of damaged areas. Our review of the best available scientific and commercial information does not indicate that increased frequency and intensity of storms is a significant threat to the species.

#### Biological Vulnerability

Species with small population sizes and restricted ranges are more vulnerable to random natural or human-induced events (e.g., storms, droughts, spills, etc.). There were concerns that the Bay skipper may have been extirpated after the habitat for the Bay St. Louis, Mississippi, population of Bay skipper was severely damaged by Hurricane Katrina in 2005, and the habitat for the Anahuac NWR, Texas, population was inundated by Hurricane Ike in 2008 (WildEarth Guardians and Xerces Society for Invertebrate Conservation 2009, p. 9). However, the discovery of additional populations, inhabiting locations which were not previously known to be occupied, with limited survey effort at the end of the September 2011 flight season, indicates that the range and total population size of the Bay skipper is poorly known and may neither be restricted, nor small (see Background). Additionally, apart from localized stochastic events, our review of the best available scientific and commercial information did not provide evidence of any specific threats to the known populations (see Factors A, B, C, and D, above), nor did it indicate that the Bay skipper is biologically vulnerable due to restricted range and small population size.

#### Pesticide Use

Butterflies and their larvae are vulnerable to pesticides; however, the estuarine marsh habitats where the species occurs are not subject to activities requiring pesticide use (see Factor A, above), and there is no available evidence to indicate that the Bay skipper is being impacted or is

likely to be impacted by pesticide or other chemical use.

#### Summary of Factor E

The discovery of additional populations and a wider range for the Bay skipper reduces the species' potential vulnerability to stochastic events. In summary, our review of the best available scientific and commercial information found no evidence that other natural or manmade factors, such as rising sea level due to climate change, biological vulnerability from restricted range or small population size, or pesticide use are threats to the Bay skipper either now or in the future.

#### Finding

As required by the Act, in assessing whether the Bay skipper is an endangered or threatened species throughout all of its range, we considered the five factors. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the Bay skipper. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized butterfly experts and other Federal and State agencies. We also conducted a brief survey for the species (Salvato 2011, pp. 1–28).

Information acquired during our review of the Bay skipper indicated that there has been an increase in the known range of the species, and an expansion of the number of known site occurrences for the species. Our limited survey of potential habitats between the Florida panhandle and Galveston, Texas, found abundant and apparently suitable habitat, and confirmed seven new site records in 7 days (Salvato 2011, pp. 1–28). In addition, there is a large extent of coastal estuarine habitats along Texas, Louisiana, and Mississippi that have not been surveyed for the presence of the Bay skipper. Existing programs have been developed and implemented to conserve and restore the extensive estuarine wetland network occupied by the Bay skipper.

Our review of the best available scientific and commercial information revealed that the Bay skipper is poorly known and additional research is needed to define range and abundance. However, during our status review, we did not document any significant threats to the species or its habitat throughout its currently known range, or within a significant portion of that range; instead, with minimal effort we increased the number of known populations (from 2 to 7), and extended the range of the

species into the largest estuarine herbaceous marsh in the United States. We found no evidence that the species has experienced curtailment of range or habitat or is affected by disease or predation, commercial or recreational harvest, the inadequacy of existing regulations, or any other natural or manmade factor. We documented only localized impacts from severe tropical storms and hurricanes; however, the species' potential vulnerability to local extirpations that might result from severe storms or any other stochastic event is offset by the discovery of additional populations and a wider range for the Bay skipper.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats are not of sufficient severity or intensity to indicate that the Bay skipper is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we find that listing the Bay skipper as an endangered or threatened species is not warranted throughout all of its range at this time.

#### *Significant Portion of the Range*

Having determined that the Bay skipper does not meet the definition of an endangered or threatened species throughout its entire range, we must next consider whether there are any significant portions of the range where the Bay skipper is in danger of extinction or is likely to become endangered in the foreseeable future. A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

In determining whether a species is an endangered or threatened species in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into

portions an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be both (1) significant and (2) endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is endangered or threatened in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is an endangered or threatened species. Likewise, if the Service considers status first and determines that the species is not an endangered or threatened species in a portion of its range, the Service need not determine if that portion is significant. However, if the Service determines that both a portion of the range of a species is significant and the species is an endangered or threatened species, the Service will specify that portion of the range as an endangered or threatened species under section 4(c)(1) of the Act.

The Bay skipper is highly restricted to estuarine habitats, and threats to estuarine habitats are limited and localized throughout its range. This species' small range suggests that stressors are likely to affect it in a

uniform manner throughout its range. However, we found the stressors are not of sufficient intensity or severity or geographically concentrated to warrant evaluating whether a portion of the range is significant under the Act. Accordingly, our assessment applies to the Bay skipper throughout its entire range.

We do not find that the Bay skipper is in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing the Bay skipper as an endangered or threatened species under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the Bay skipper to the Mississippi Ecological Service's Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor the Bay skipper and encourage its conservation. If an emergency situation develops for the Bay skipper or any other species, we will act to provide immediate protection.

#### **References Cited**

A complete list of references cited is available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2011-0012 and upon request from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### **Author**

The primary author of this notice is the staff of the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 9, 2012.

**Rowan W. Gould,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2012-20820 Filed 8-27-12; 8:45 am]

**BILLING CODE 4310-55-P**

# Notices

Federal Register

Vol. 77, No. 167

Tuesday, August 28, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 23, 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](mailto: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) 720-8958.

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.

### Food and Nutrition Service

*Title:* The Assessment of Contribution of an Interview to SNAP Eligibility and Benefit Determination Study

*OMB Control Number:* 0584-NEW.

*Summary of Collection:* The Food and Nutrition Service (FNS) seeks approval to conduct data collection as part of the Assessment of the Contributions of an Interview to Supplemental Nutrition Assistance Program (SNAP) Eligibility and Benefit Determinations. The overall aid of this evaluation is to examine the impact of eliminating client interviews at SNAP certification and recertification. A central feature of the changes is a waiver that allows States to conduct the in-person eligibility interview over the telephone. Many States have implemented this interview waiver. Some States have expressed interest in exploring alternative certification approaches that do not require conducting any interviews in the SNAP eligibility determination process. However, little data is available to access the impact of eliminating a certification interview on client access, customer service, and program integrity. The authority for this collection is contained in Section 17 [7 U.S.C. 2026](a)(1) of the Food and Nutrition Act of 2008.

*Need and Use of the Information:* The study will focus on the contribution of interviews of the determination of SNAP eligibility and benefits. The overall purpose of this study is to meet its research objectives with the precision necessary to inform future SNAP policy. It will quantify the impact of replacing the in-person interview with no interview and examine how this affects participation, efficiency, access, payment accuracy, and client satisfaction.

*Description of Respondents:* Individuals or households; not-for-profit institutions.

*Number of Respondents:* 4,358.

*Frequency of Responses:* Reporting: Other (one time).

*Total Burden Hours:* 1,082.

### Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012-21199 Filed 8-27-12; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Southwest Mississippi Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Mississippi Resource Advisory Committee will meet in Meadville, MS. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 112-141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

**DATES:** The meeting will be held Tuesday, September 18, 2012; 6:00 p.m.

**ADDRESSES:** The meeting will be held at 3085 Hwy 98 East, Homochitto Ranger District Work Center. A map and directions may be obtained by calling the contact listed below.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Homochitto District Office. Please call ahead to 601-384-5876 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Bruce Prud'homme, District Ranger, 601-384-5876, TTY 601-384-8056, [bprudhomme@fs.fed.us](mailto:bprudhomme@fs.fed.us) or Dave Chabreck, Operations Leader, 601-384-5876, [dochabreck@fs.fed.us](mailto:dochabreck@fs.fed.us), TTY 601-384-8056. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: general business, previous project status updates, project funding, review and

selection of proposed projects. A full agenda may be previewed at: [https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure\\_rural\\_schools.nsf/RAC/Southwest+Mississippi](https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Southwest+Mississippi). Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 10, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 1200 Hwy 184 East, Meadville, MS 39653, or by email to [bprudhomme@fs.fed.us](mailto:bprudhomme@fs.fed.us), or via facsimile to 601-384-2172. A summary of the meeting will be posted at: [https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure\\_rural\\_schools.nsf/RAC/Southwest+Mississippi](https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Southwest+Mississippi) within 21 days of the meeting.

**Meeting Accommodations:** If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 21, 2012.

**Bruce Prud'homme,**  
District Ranger.

[FR Doc. 2012-21188 Filed 8-27-12; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Upper Rio Grande Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Upper Rio Grande Resource Advisory Committee will meet in South Fork, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) and in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend project

proposals to be funded with the title II of the Act.

**DATES:** The meeting will be held on September 12, 2012 and will begin at 10:00 a.m.

**ADDRESSES:** The meeting will be held at the South Fork Community Building, 0254 Highway 149, South Fork, Colorado. Written comments should be sent to Mike Blakeman, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144. Comments may also be sent via email to [mblakeman@fs.fed.us](mailto:mblakeman@fs.fed.us), or via facsimile to 719-852-6250.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144. Please call ahead to 719-852-5941 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Mike Blakeman, RAC coordinator, USDA, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144; 719-852-6212; Email [mblakeman@fs.fed.us](mailto:mblakeman@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel; (2) Review status of approved projects; (3) Review, evaluate and recommend project proposals to be funded with Title II money; and (4) Public Comment. More information may be viewed at [https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure\\_rural\\_schools.nsf/Web\\_Agendas?OpenView&Count=1000&RestrictToCategory=Upper+Rio+Grande+](https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Upper+Rio+Grande+). Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. A summary of the meeting will be posted at [https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure\\_rural\\_schools.nsf/Web\\_Agendas?OpenView&Count=1000&RestrictToCategory=Upper+Rio+Grande+](https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Upper+Rio+Grande+) within 21 days of the meeting.

**Meeting Accommodations:** If you require sign language interpreting, assistive listening devices or other reasonable accommodation for access to the meeting please request this in advance by contacting the person listed in the section title For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 21, 2012.

**Dan S. Dallas,**

Forest Supervisor.

[FR Doc. 2012-21150 Filed 8-27-12; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Eastern Arizona Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Eastern Arizona Resource Advisory Committee will meet in Springerville, Arizona. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112-141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

**DATES:** The meeting will be held September 18, 2012, beginning at 10:30 a.m. until 5 p.m., and continue if necessary, on September 19, 2012, beginning at 9:00 a.m. until approximately 4 p.m.

**ADDRESSES:** The meeting will be held at the Apache-Sitgreaves National Forests Supervisor's Office conference room, located at 30 South Chiricahua Drive, Springerville, Arizona 85938. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Apache-Sitgreaves National Forests Supervisor's Office, located at 30 South Chiricahua Drive, Springerville, Arizona 85938. Please call ahead to 928 333-6261 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Joe Vieth, RAC Program Coordinator, Eastern Arizona Resource Advisory Committee, Apache-Sitgreaves National Forests, telephone 928 333-6261 or [jvieth@fs.fed.us](mailto:jvieth@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: the Resource Advisory Committee will review and recommend funding of project proposals. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 10, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Apache-Sitgreaves National Forests, P.O. Box 640, Springerville, AZ 85938, or by email to [jvieth@fs.fed.us](mailto:jvieth@fs.fed.us), or via facsimile to 928 333-5966. A summary of the meeting will be posted at [https://fs.fed.us/fsfiles/unitwo/secure\\_rural\\_schools.nsf](https://fs.fed.us/fsfiles/unitwo/secure_rural_schools.nsf) within 21 days of the meeting.

*Meeting Accommodations:* If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 16, 2012.

**James E. Zornes,**

*Forest Supervisor.*

[FR Doc. 2012-20850 Filed 8-27-12; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### North Central Idaho Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The North Central Idaho RAC will be meeting via a conference call. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) and in compliance

with the Federal Advisory Committee Act. The purpose of the meeting is for RAC Members to recommend additional FY 2013 Title II projects (under the one year Secure Rural Schools extension) for approval. Meetings are always open to the public.

**DATES:** The meeting will be held on September 6, 2012, at 1:00 p.m. (PST).

**ADDRESSES:** The meeting will be held at the Nez Perce National Forest Supervisors Office, 104 Airport Road, Grangeville, Idaho. Written comments should be sent to Laura Smith at 104 Airport Road in Grangeville, Idaho 83530. Comments may also be sent via email to [lasmith@fs.fed.us](mailto:lasmith@fs.fed.us) or via facsimile to Laura at 208-983-4099.

**FOR FURTHER INFORMATION CONTACT:** Laura Smith, Designated Forest Official at 208-983-5143.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. A public forum will begin at 2:00 p.m. (PST) on the meeting day. The following business will be conducted: Comments and questions from the public to the committee. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: August 21, 2012.

**Ralph E. Rau,**

*Deputy Forest Supervisor.*

[FR Doc. 2012-21166 Filed 8-27-12; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Upper Rio Grande Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Saguache Resource Advisory Committee will meet in Saguache, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) and in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend project proposals to be funded with the title II of the Act.

**DATES:** The meeting will be held on September 17, 2012 and will begin at 10:00 a.m.

**ADDRESSES:** The meeting will be held at the Saguache County Road and Bridge building, 305 Third Street, Saguache, Colorado. Written comments should be sent to Mike Blakeman, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144. Comments may also be sent via email to [mblakeman@fs.fed.us](mailto:mblakeman@fs.fed.us), or via facsimile to 719-852-6250.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144. Please call ahead to 719-852-5941 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Mike Blakeman, RAC coordinator, USDA, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144; 719-852-6212; Email [mblakeman@fs.fed.us](mailto:mblakeman@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted:

(1) Introductions of all committee members, replacement members and Forest Service personnel; (2) Review status of approved projects; (3) Review, evaluate and recommend project proposals to be funded with Title II money; and (4) Public Comment. More information may be viewed at [https://fsplaces.fs.fed.us/fsfiles/unitwo/secure\\_rural\\_schools.nsf/Web\\_Agendas?OpenView&Count=1000&RestrictToCategory=Saguache](https://fsplaces.fs.fed.us/fsfiles/unitwo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Saguache). Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. A summary of the meeting will be posted at [https://fsplaces.fs.fed.us/fsfiles/unitwo/secure\\_rural\\_schools.nsf/Web\\_Agendas?OpenView&Count=1000&RestrictToCategory=Saguache](https://fsplaces.fs.fed.us/fsfiles/unitwo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Saguache) within 21 days of the meeting.

*Meeting Accommodations:* If you require sign language interpreting, assistive listening devices or other reasonable accommodation for access to the meeting please request this in

advance by contacting the person listed in the section titled For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 22, 2012.

**Dan S. Dallas,**

*Forest Supervisor.*

[FR Doc. 2012-21151 Filed 8-27-12; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Current Population Survey, November Voting and Registration Supplement.

*OMB Number:* 0607-0466.

*Form Number(s):* None.

*Type of Request:* Reinstatement, with change, of an expired collection.

*Burden Hours:* 1,300.

*Number of Respondents:* 52,000.

*Average Hours per Response:* 1 and a half minutes.

*Needs and Uses:* The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the November 2012 and 2014 Voting and Registration supplement to the Current Population Survey (CPS). The Voting and Registration supplement continues the biennial collection of data concerning voting and registration that has been asked periodically since 1964. The data yield statistics on voter (and nonvoter) characteristics and current voter trends. The data also will enable policymakers to keep issues up to date, such as changes in participation in the election process by demographic characteristics such as age, sex, race, ethnicity, and educational attainment. This submission includes the unchanged Voting and Registration Supplement with the deletion of the Civic Engagement Supplement.

The primary purpose of collecting the voting data from the November CPS supplement is to relate demographic characteristics (age, sex, race, education, occupation, and income) to voting and nonvoting behavior. Federal, state, and local election officials; college institutions; political party committees; research groups; and other private

organizations will use the voting and registration data collected in the November CPS supplement. Election officials use these data to formulate policies relating to the voting and registration process. Data obtained on duration of residence will allow policymakers and researchers to better determine the relationships between other demographic characteristics and voting behavior. Previous studies have shown that the voting and registration characteristics of recent movers differ greatly from those of nonmovers. By collecting and presenting data at the state level, we will also obtain information on the effectiveness of increased voter registration drives in different regions.

Discontinuance of the Voting and Registration Supplement would disrupt a data series that has been in existence for the past 46 years. Since 1964, these data have provided statistical information for tracking historical trends of voter and nonvoter characteristics in each presidential and congressional election.

*Affected Public:* Individuals or households.

*Frequency:* Biennially.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Section 182.

*OMB Desk Officer:* Brian Harris-Kojetin, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482-0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at [jjessup@doc.gov](mailto:jjessup@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202-395-7245) or email ([bharrisk@omb.eop.gov](mailto:bharrisk@omb.eop.gov)).

Dated: August 22, 2012.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012-21096 Filed 8-27-12; 8:45 am]

**BILLING CODE 3510-07-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XC188

### Mid-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 Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a public meeting.

**DATES:** The meeting will be held on Thursday, September 13, 2012 beginning at 10 a.m.

**ADDRESSES:** The meeting will be held via webinar with a telephone-only connection option. Details on webinar registration and the telephone-only connection details are available at: <http://www.mafmc.org>.

*Council address:* Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331, extension 255.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is (1) data and analyses which will form the basis for the 2013-16 ABC determination for spiny dogfish and (2) a request by the Council to clarify the SSC's 2012 ABC recommendation for butterfish. Information about accessing the webinar on September 13 is available on the Councils Web site at [www.mafmc.org](http://www.mafmc.org). A public listening station to allow public access to the webinar will be available at the Council offices located 800 N. State St., Suite 201, Dover, DE 19901.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526-5251, at least 5 days prior to the meeting date.

Dated: August 23, 2012.

**William D. Chappell,**

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

[FR Doc. 2012-21223 Filed 8-27-12; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648–XC185

**Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar**

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

**ACTION:** Notice; issuance of four Letters of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued four 1-year Letters of Authorization (LOAs) to take marine mammals by harassment incidental to the U.S. Navy's operation of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar operations to the Chief of Naval Operations, Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350 and persons operating under his authority.

**DATES:** Effective from August 15, 2012, through August 14, 2013.

**ADDRESSES:** Electronic copies of the Navy's April 19, 2012, LOA application letter and the LOAs are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, Office of Protected Resources, NMFS (301) 427–8401.

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

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's operation of SURTASS LFA sonar were effective on August 15, 2012 (77 FR 50290, August 20, 2012) and remain in effect through August 15, 2017. They are codified at 50 CFR part 218 subpart X. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system. For detailed information on this action, please refer to the August 20, 2012 **Federal Register** document and 50 CFR part 218 subpart X.

**Summary of LOA Request**

NMFS received an application from the U.S. Navy for four LOAs, one covering the USNS VICTORIOUS (T-AGOS 19), one covering the USNS ABLE (T-AGOS 20), one covering the USNS EFFECTIVE (T-AGOS 21), and one covering the USNS IMPECCABLE (T-AGOS 23), under the regulations effective on August 15, 2012 (77 FR 50290, August 20, 2012). The Navy requested that these LOAs become effective on August 15, 2012. The application requested authorization, for a period not to exceed one year, to take, by harassment, marine mammals incidental to employment of the SURTASS LFA sonar system for training, testing and routine military operations on the aforementioned ships in areas of the Pacific Ocean, as described in the 2012 regulations.

**Monitoring and Reporting**

In compliance with NMFS' 2007 SURTASS LFA sonar regulations which expired on August 15, 2007, the Navy submitted a comprehensive report on SURTASS LFA sonar operations and the mitigation and monitoring activities conducted under the LOAs issued under its previous rule for the 2007 through 2012 period. A copy of this report can

be viewed and/or downloaded at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Based on this report and other annual and comprehensive reports, the Navy has conducted the specified activities in the manner described in the regulations and LOAs, and has implemented the required mitigation and monitoring measures. Additionally, marine mammal detections and behavioral observations suggest that the actual impacts of SURTASS LFA sonar operation and training fall within the scope and nature of those analyzed and anticipated by the regulations and LOAs.

In accordance with the current SURTASS LFA sonar regulations (50 CFR 218.230), the Navy must submit quarterly mitigation monitoring reports; annual reports; and a 5-year comprehensive report. Under the previous two rulemakings, the Navy has not exceeded the take authorized by NMFS. Upon receipt, NMFS will post this annual report at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

**Authorization**

NMFS has issued four LOAs to the U.S. Navy, authorizing the incidental harassment of marine mammals, incidental to operating the four SURTASS LFA sonar systems for routine training, testing and use during military operations. Issuance of these four LOAs is based on findings, described in the preamble to the final rule (77 FR 50290, August 20, 2012) and supported by information contained in the Navy's required reports on SURTASS LFA sonar, that the activities described under these four LOAs will have no more than a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses.

These LOAs remain valid through August 14, 2013, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 218.230 through 218.241 (77 FR 50290, August 20, 2012) and in the LOAs are undertaken.

Dated: August 23, 2012.

**Helen M. Golde,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–21225 Filed 8–27–12; 8:45 am]

**BILLING CODE 3510–22–P**

**DEPARTMENT OF DEFENSE****Office of the Secretary****Renewal of Missile Defense Advisory Committee****AGENCY:** DoD.**ACTION:** Renewal of Federal Advisory Committee.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(d), the Department of Defense gives notice that it is renewing the charter for the Missile Defense Advisory Committee (hereafter referred to as “the Committee”).

The Committee shall provide the Secretary of Defense, through the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Director, Missile Defense Agency (MDA), independent advice and recommendations on all matters relating to missile defense, including system development, technology, program maturity and readiness of configurations for the Ballistic Missile Defense System.

The Committee shall be composed of not more than eleven Committee members, who are eminent authorities in the field of national defense policy, acquisition and technical areas relating to Ballistic Missile Defense System Programs including distinguished members of academia and the science and technology communities; Federally Funded Research and Development Centers (FFRDCs)/National Laboratories and industry.

Committee members shall be appointed by the Secretary of Defense and their appointments will be renewed on an annual basis. Those members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and serve as special government employees. With the exception of travel and per diem for official Committee related travel, Committee members shall serve without compensation, unless authorized by the Secretary of Defense.

Committee members may be appointed for term of service ranging from one-to-two years. Unless authorized by the Secretary of Defense, no member may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

The Secretary of Defense, based upon the recommendation of the Under Secretary of Defense for Acquisition,

Technology, and Logistics, shall appoint the Committee’s Chairperson from the total Committee membership. The Under Secretary of Defense Acquisition, Technology, and Logistics, shall appoint the Vice Chairperson, based on the recommendation of the Director, MDA. The Committee Chairperson and Vice Chairperson may serve a term of service of one-to-two years and may serve more than one term of service, not to exceed two terms, and not to exceed their maximum allowed membership on the Committee; however, with the concurrence of the appointing authority, may be reappointed in these positions for additional terms.

The Under Secretary of Defense for Acquisition, Technology, and Logistics, pursuant to DoD policies/procedures, may appoint, as deemed necessary, experts and consultants, with special expertise, to assist the Committee on an ad hoc basis. These experts and consultants, if not full-time or part time government employees, shall be appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees, shall be appointed on an intermittent basis to work specific Committee-related efforts, and shall have no voting rights. Non-voting experts and consultants shall serve terms of appointments as determined by the Under Secretary of Defense for Acquisition, Technology, and Logistics, according to DoD policy/procedures. Non-voting experts and consultants appointed by the Under Secretary of Defense for Acquisition, Technology, and Logistics shall not count toward the Committee’s total membership.

Each Committee member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary and consistent with the Committee’s mission and DoD policies and procedures, may establish subcommittees to support the Committee. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Under Secretary of Defense for Acquisition, Technology, and Logistics.

The Committee has established three permanent subcommittees: The Technical Subcommittee, Geopolitical Subcommittee, and the Agency Strategic Operations Subcommittee which are comprised of members who are eminent authorities in the fields of science, technology, manufacturing, acquisition process, system development, national

defense policy and other matters of special interest to the DoD and MDA.

a. The Technical Subcommittee shall be comprised of no more than seven members. The primary focus of the Subcommittee is to conduct independent reviews and assessments of topics deemed critical by the Secretary of Defense, Deputy Secretary of Defense, and Under Secretary of Defense for Acquisition, Technology, and Logistics including application of technology to improve missile defense capabilities and quality and relevance of missile defense science, engineering and technology programs; and system development. The estimated number of subcommittee meeting is up to four per year.

b. The Geopolitical Subcommittee shall be comprised of no more than six members. The primary focus of the Subcommittee is to conduct independent reviews and assessments of topics deemed critical by the Secretary of Defense, Deputy Secretary of Defense, and Under Secretary of Defense for Acquisition, Technology, and Logistics including issues central to missile defense strategic priorities and policy implications of United States defense strategies; program maturity and readiness of configurations; national defense policy and acquisition. The estimated number of subcommittee meetings is up to four per year.

c. The Agency Strategic Operations Subcommittee shall be comprised of no more than six members. The primary focus of the Subcommittee is to conduct independent reviews and assessments of quick reaction and ad hoc topics deemed critical by the Secretary of Defense, Deputy Secretary of Defense, Under Secretary of Defense for Acquisition, Technology, and Logistics, and Director, Missile Defense Agency. The estimated number of subcommittee meeting is up to four per year.

These subcommittees shall not work independently of the chartered Committee, and shall report all their recommendations and advice to the Committee for full deliberation and discussion. These subcommittees have no authority to make decisions on behalf of the chartered Committee; nor can any subcommittee or its members update or report directly to the DoD or any Federal officers or employees who are not Committee members.

All subcommittee members shall be appointed in the same manner as the Committee members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Committee member. Subcommittee members, with the approval of the

Secretary of Defense, may serve a term of service on the subcommittee of one-to-two years, with annual renewals. No member shall serve more than two consecutive terms of service on the subcommittee; however, with the concurrence of the appointing authority, may be reappointed in these positions for additional terms.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Committee-related travel, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies/procedures.

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703-692-5952.

**SUPPLEMENTARY INFORMATION:** The Committee shall meet at the call of the Designated Federal Officer, in consultation with the Chairperson. The estimated number of Committee meetings is four per year.

In addition, the Designated Federal Officer is required to be in attendance at all Committee and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, a properly approved Alternate Designated Federal Officer shall attend the entire duration of the Committee or subcommittee meeting.

The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Committee's and subcommittee's meetings; prepare and approve all meeting agendas; adjourn any meeting when the Designated Federal Officer, or the Alternate

Designated Federal Officer, determines adjournment to be in the public interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the official to whom the Committee reports.

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, the public or interested organizations may submit written statements to Missile Defense Advisory Committee membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Missile Defense Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Missile Defense Advisory Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Missile Defense Advisory Committee's Designated Federal Officer can be obtained from the GSA's FACA Database—<https://www.fido.gov/facadatabase/public.asp>.

The Designated Federal Officer, pursuant to 41 CFR 102-3.150, will announce planned meetings of the Missile Defense Advisory Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: August 22, 2012.

**Aaron Siegel,**

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

[FR Doc. 2012-21094 Filed 8-27-12; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Revised Non-Foreign Overseas Per Diem Rates

**AGENCY:** Per Diem, Travel and Transportation Allowance Committee, DOD.

**ACTION:** Notice of revised non-foreign overseas per diem rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 285. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 285 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

**DATES:** *Effective Date:* September 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Sonia Malik, 571-372-1276.

**SUPPLEMENTARY INFORMATION:** This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 284. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 285 are updated rates for American Samoa, Puerto Rico, and Wake Island.

Dated: August 22, 2012.

**Aaron Siegel,**

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

**BILLING CODE 5001-06-P**

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
<b>ALASKA</b>							
	[OTHER]						
	01/01 - 12/31	110		105		215	2/1/2012
	ADAK						
	01/01 - 12/31	120		79		199	7/1/2003
	ANCHORAGE [INCL NAV RES]						
	05/16 - 09/30	181		104		285	2/1/2012
	10/01 - 05/15	99		96		195	2/1/2012
	BARROW						
	01/01 - 12/31	159		95		254	10/1/2002
	BETHEL						
	01/01 - 12/31	157		99		256	7/1/2011
	BETTLES						
	01/01 - 12/31	135		62		197	10/1/2004
	CLEAR AB						
	01/01 - 12/31	90		82		172	10/1/2006
	COLDFOOT						
	01/01 - 12/31	165		70		235	10/1/2006
	COPPER CENTER						
	09/16 - 05/14	99		95		194	2/1/2012
	05/15 - 09/15	149		99		248	2/1/2012
	CORDOVA						
	01/01 - 12/31	95		109		204	2/1/2012
	CRAIG						
	10/01 - 04/30	99		78		177	11/1/2011
	05/01 - 09/30	129		81		210	11/1/2011
	DEADHORSE						
	01/01 - 12/31	170		68		238	8/1/2012
	DELTA JUNCTION						
	01/01 - 12/31	129		62		191	2/1/2012
	DENALI NATIONAL PARK						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	05/01 - 09/30	159		101		260	2/1/2012
	10/01 - 04/30	89		94		183	2/1/2012
DILLINGHAM							
	05/15 - 10/15	185		111		296	1/1/2011
	10/16 - 05/14	169		109		278	1/1/2011
DUTCH HARBOR-UNALASKA							
	01/01 - 12/31	121		102		223	2/1/2012
EARECKSON AIR STATION							
	01/01 - 12/31	90		77		167	6/1/2007
EIELSON AFB							
	09/16 - 05/14	75		92		167	2/1/2012
	05/15 - 09/15	175		102		277	2/1/2012
ELFIN COVE							
	01/01 - 12/31	175		46		221	2/1/2012
ELMENDORF AFB							
	05/16 - 09/30	181		104		285	2/1/2012
	10/01 - 05/15	99		96		195	2/1/2012
FAIRBANKS							
	05/15 - 09/15	175		102		277	2/1/2012
	09/16 - 05/14	75		92		167	2/1/2012
FOOTLOOSE							
	01/01 - 12/31	175		18		193	10/1/2002
FT. GREEELY							
	01/01 - 12/31	129		62		191	2/1/2012
FT. RICHARDSON							
	05/16 - 09/30	181		104		285	2/1/2012
	10/01 - 05/15	99		96		195	2/1/2012
FT. WAINWRIGHT							
	05/15 - 09/15	175		102		277	2/1/2012
	09/16 - 05/14	75		92		167	2/1/2012
GAMBELL							
	01/01 - 12/31	105		39		144	1/1/2011
GLENNALLEN							
	05/15 - 09/15	149		99		248	2/1/2012

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	09/16 - 05/14	99		95		194	2/1/2012
HAINES							
	01/01 - 12/31	107		101		208	1/1/2011
HEALY							
	05/01 - 09/30	159		101		260	2/1/2012
	10/01 - 04/30	89		94		183	2/1/2012
HOMER							
	09/16 - 05/04	79		108		187	2/1/2012
	05/05 - 09/15	167		117		284	2/1/2012
JUNEAU							
	05/16 - 09/15	149		104		253	2/1/2012
	09/16 - 05/15	135		103		238	2/1/2012
KAKTOVIK							
	01/01 - 12/31	165		86		251	10/1/2002
KAVIK CAMP							
	01/01 - 12/31	150		69		219	10/1/2002
KENAI-SOLDOTNA							
	05/01 - 08/31	179		102		281	2/1/2012
	09/01 - 04/30	79		92		171	2/1/2012
KENNICOTT							
	01/01 - 12/31	175		111		286	2/1/2012
KETCHIKAN							
	05/01 - 09/30	140		97		237	2/1/2012
	10/01 - 04/30	99		94		193	2/1/2012
KING SALMON							
	05/01 - 10/01	225		91		316	10/1/2002
	10/02 - 04/30	125		81		206	10/1/2002
KLAWOCK							
	05/01 - 09/30	129		81		210	11/1/2011
	10/01 - 04/30	99		78		177	11/1/2011
KODIAK							
	05/01 - 09/30	152		93		245	2/1/2012
	10/01 - 04/30	100		88		188	2/1/2012
KOTZEBUE							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	219		115		334	2/1/2012
KULIS AGS							
	10/01 - 05/15	99		96		195	2/1/2012
	05/16 - 09/30	181		104		285	2/1/2012
MCCARTHY							
	01/01 - 12/31	175		111		286	2/1/2012
MCGRATH							
	01/01 - 12/31	165		69		234	10/1/2006
MURPHY DOME							
	05/15 - 09/15	175		102		277	2/1/2012
	09/16 - 05/14	75		92		167	2/1/2012
NOME							
	01/01 - 12/31	140		132		272	2/1/2012
NUIQSUT							
	01/01 - 12/31	180		53		233	10/1/2002
PETERSBURG							
	01/01 - 12/31	110		105		215	2/1/2012
POINT HOPE							
	01/01 - 12/31	200		49		249	1/1/2011
POINT LAY							
	01/01 - 12/31	225		51		276	8/1/2011
PORT ALEXANDER							
	01/01 - 12/31	150		43		193	8/1/2010
PORT ALSWORTH							
	01/01 - 12/31	135		88		223	10/1/2002
PRUDHOE BAY							
	01/01 - 12/31	170		68		238	1/1/2011
SELDOVIA							
	05/05 - 09/15	167		117		284	2/1/2012
	09/16 - 05/04	79		108		187	2/1/2012
SEWARD							
	05/01 - 10/15	172		103		275	2/1/2012
	10/16 - 04/30	85		95		180	2/1/2012
SITKA-MT. EDGE CUMBE							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	10/01 - 04/30	99		90		189	2/1/2012
	05/01 - 09/30	119		92		211	2/1/2012
SKAGWAY							
	10/01 - 04/30	99		94		193	2/1/2012
	05/01 - 09/30	140		97		237	2/1/2012
SLANA							
	05/01 - 09/30	139		55		194	2/1/2005
	10/01 - 04/30	99		55		154	2/1/2005
SPRUCE CAPE							
	05/01 - 09/30	152		93		245	2/1/2012
	10/01 - 04/30	100		88		188	2/1/2012
ST. GEORGE							
	01/01 - 12/31	129		55		184	6/1/2004
TALKEETNA							
	01/01 - 12/31	100		89		189	10/1/2002
TANANA							
	01/01 - 12/31	140		132		272	2/1/2012
TOK							
	05/15 - 09/30	95		89		184	2/1/2012
	10/01 - 05/14	85		88		173	2/1/2012
UMIAT							
	01/01 - 12/31	350		64		414	2/1/2012
VALDEZ							
	05/16 - 09/14	159		89		248	2/1/2012
	09/15 - 05/15	119		85		204	2/1/2012
WAINWRIGHT							
	01/01 - 12/31	175		83		258	1/1/2011
WASILLA							
	05/01 - 09/30	153		90		243	2/1/2012
	10/01 - 04/30	89		84		173	2/1/2012
WRANGELL							
	10/01 - 04/30	99		94		193	2/1/2012
	05/01 - 09/30	140		97		237	2/1/2012
YAKUTAT							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	105		94		199	1/1/2011
<b>AMERICAN SAMOA</b>							
	AMERICAN SAMOA 01/01 - 12/31	139		96		235	9/1/2012
<b>GUAM</b>							
	GUAM (INCL ALL MIL INSTAL) 01/01 - 12/31	159		96		255	7/1/2012
<b>HAWAII</b>							
	[OTHER]						
	07/01 - 08/21	114		118		232	5/1/2012
	08/22 - 06/30	104		117		221	5/1/2012
	CAMP H M SMITH 01/01 - 12/31	177		126		303	5/1/2012
	EASTPAC NAVAL COMP TELE AREA 01/01 - 12/31	177		126		303	5/1/2012
	FT. DERUSSEY 01/01 - 12/31	177		126		303	5/1/2012
	FT. SHAFTER 01/01 - 12/31	177		126		303	5/1/2012
	HICKAM AFB 01/01 - 12/31	177		126		303	5/1/2012
	HONOLULU 01/01 - 12/31	177		126		303	5/1/2012
	ISLE OF HAWAII: HILO						
	07/01 - 08/21	114		118		232	5/1/2012
	08/22 - 06/30	104		117		221	5/1/2012
	ISLE OF HAWAII: OTHER 01/01 - 12/31	180		129		309	5/1/2012
	ISLE OF KAUAI 01/01 - 12/31	243		131		374	5/1/2012
	ISLE OF MAUI 01/01 - 12/31	209		137		346	5/1/2012
	ISLE OF OAHU						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	177		126		303	5/1/2012
KEKAHA PACIFIC MISSILE RANGE FAC							
	01/01 - 12/31	243		131		374	5/1/2012
KILAUEA MILITARY CAMP							
	07/01 - 08/21	114		118		232	5/1/2012
	08/22 - 06/30	104		117		221	5/1/2012
LANAI							
	01/01 - 12/31	249		155		404	5/1/2012
LUALUALEI NAVAL MAGAZINE							
	01/01 - 12/31	177		126		303	5/1/2012
MCB HAWAII							
	01/01 - 12/31	177		126		303	5/1/2012
MOLOKAI							
	01/01 - 12/31	131		89		220	5/1/2012
NAS BARBERS POINT							
	01/01 - 12/31	177		126		303	5/1/2012
PEARL HARBOR							
	01/01 - 12/31	177		126		303	5/1/2012
SCHOFIELD BARRACKS							
	01/01 - 12/31	177		126		303	5/1/2012
WHEELER ARMY AIRFIELD							
	01/01 - 12/31	177		126		303	5/1/2012
<b>MIDWAY ISLANDS</b>							
MIDWAY ISLANDS							
	01/01 - 12/31	125		68		193	5/1/2012
<b>NORTHERN MARIANA ISLANDS</b>							
[OTHER]							
	01/01 - 12/31	85		76		161	7/1/2012
ROTA							
	01/01 - 12/31	130		106		236	7/1/2012
SAIPAN							
	01/01 - 12/31	140		87		227	7/1/2012
TINIAN							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	85		76		161	7/1/2012
<b>PUERTO RICO</b>							
[OTHER]							
	01/01 - 12/31	109		112		221	6/1/2012
AGUADILLA							
	01/01 - 12/31	124		113		237	9/1/2010
BAYAMON							
	01/01 - 12/31	195		128		323	9/1/2010
CAROLINA							
	01/01 - 12/31	195		128		323	9/1/2010
CEIBA							
	01/01 - 12/31	210		141		351	11/1/2010
CULEBRA							
	01/01 - 12/31	150		98		248	3/1/2012
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]							
	01/01 - 12/31	210		141		351	11/1/2010
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]							
	01/01 - 12/31	195		128		323	9/1/2010
HUMACAO							
	01/01 - 12/31	210		141		351	11/1/2010
LUIS MUNOZ MARIN IAP AGS							
	01/01 - 12/31	195		128		323	9/1/2010
LUQUILLO							
	01/01 - 12/31	210		141		351	11/1/2010
MAYAGUEZ							
	01/01 - 12/31	109		112		221	9/1/2010
PONCE							
	01/01 - 12/31	149		89		238	9/1/2012
RIO GRANDE							
	01/01 - 12/31	169		123		292	6/1/2012
SABANA SECA [INCL ALL MILITARY]							
	01/01 - 12/31	195		128		323	9/1/2010
SAN JUAN & NAV RES STA							

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	195		128		323	9/1/2010
VIEQUES							
	01/01 - 12/31	175		95		270	3/1/2012
<b>VIRGIN ISLANDS (U.S.)</b>							
ST. CROIX							
	04/15 - 12/14	135		92		227	5/1/2006
	12/15 - 04/14	187		97		284	5/1/2006
ST. JOHN							
	04/15 - 12/14	163		98		261	5/1/2006
	12/15 - 04/14	220		104		324	5/1/2006
ST. THOMAS							
	04/15 - 12/14	240		105		345	5/1/2006
	12/15 - 04/14	299		111		410	5/1/2006
<b>WAKE ISLAND</b>							
WAKE ISLAND							
	01/01 - 12/31	173		42		215	9/1/2012

[FR Doc. 2012-21055 Filed 8-27-12; 8:45 am]

BILLING CODE 5001-06-C

**DEPARTMENT OF DEFENSE****Department of the Air Force**

[Docket ID: USAF-2012-0016]

**Proposed Collection; Comment Request****AGENCY:** United States Security Forces Center, Headquarters, DoD.**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the United States Security Forces Center, Headquarters announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 29, 2012.**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments,

please write to HQ AFSFC/SFOP, ATTN: TSgt Heather M. Cain/TSgt Janaea E. Warner, 1517 Billy Mitchell Blvd., Lackland AFB, TX 78236-0119, or call SFOP, Security Forces Police Services, at 210-925-5050/0266.

*Title; Associated Form; and OMB Number:* Security Forces Management Information System (SFMIS), AF Form 1199A, 1199B, 1199C, 1199D, *USAF Restricted Area Badge*; AF Form 75, *Visitor Pass*; AF 2586, *Unescorted Entry Authorization Certificate* and OMB Number 0701-TBD.

*Needs and Uses:* The Security Forces Management Information System (SFMIS) was developed primarily to meet the Congressionally-mandated Defense Incident-Based Reporting System (DIBRS) requirements and improve Air Force Security Forces day-to-day operations IAW 10 U.S.C. 8013, Secretary of the Air Force; 18 U.S.C. 922 note, DoD Directive 5200.27, Air Force Instruction 31-203, *Security Forces Management Information System*; Air Force Instruction 31-101, *Integrated Defense* and E.O. 9397 (SSN), as amended. SFMIS also provides Restricted Area Badge creation and Installation Access Control in those cases where DBIDS is not fully deployed.

The Pass & ID module in SFMIS automated most of SF clerical tasks, a majority of administrative tasks formerly performed manually are now done online via SFMIS, (i.e. AF Form 1199A, 1199B, 1199C, 1199D, *USAF Restricted Area Badge*; AF Form 75, *Visitor Pass*; AF 2586, *Unescorted Entry Authorization Certificate*) which document installation access and restricted area.

*Affected Public:* Non-military personnel (civilians) and contractors business or other for profit; not-for-profit institutions.

*Annual Burden Hours:* 28,000.  
*Number of Respondents:* 4.  
*Responses per Respondent:* 28,000.  
*Annual Number of Responses:* 112,000.

*Average Burden per Response:* 15 minutes.

*Frequency:* Daily.

**SUPPLEMENTARY INFORMATION:****Summary of Information Collection**

Respondents are DoD personnel assigned to Security Forces units who provide visitor passes for installation access and restricted area badges for controlled and restricted area access. SFMIS maintains personal information such as: Full names, Social Security Numbers (SSN); date of birth, home address, phone numbers, alias; race ethnicity, sex, height, weight, eye hair

color, and any approved document (must be a picture ID) that is accepted as proof of identity, it must not be expired and has to be valid. SFMIS provides Restricted Area Badge creation and Installation Access Control in those cases where DBIDS is not fully deployed.

The Badge/ID panel in the Pass & ID Module is used to record restricted and controlled area badges or identification cards using the information collected on the AF 2586. SFMIS will maintain an inventory on the stored data and create an Entry Authority List (EAL) or Master Entry Authority List (MEAL). SFMIS also prints restricted area badges, maintains the inventory and prints a destruction certificate for destroyed restricted area badges.

This Visitor Pass panel in the Pass & ID Module is used to complete visitor pass requests and view and print the AF Form 75. An electronic signature pad can be set up with SFMIS to capture the visitor's electronic signature. Visitor passes can be completed two different ways. First, SF personnel can create a new visitor pass for a customer by entering the visitor's information into the system. Secondly, SF personnel can search the system for a pending web registration or kiosk request; select the name in the search results grid and it will populate the panel with the existing information. Visitor passes are stored in SFMIS for a 90 day period. During these 90 days, previously issued visitor passes can be recalled. Visitor passes may be recalled as an investigative tool or it can be used to issue a new pass based on the previous information.

Dated: August 22, 2012.

**Aaron Siegel,**

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

[FR Doc. 2012-21098 Filed 8-27-12; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE****Department of the Army; Corps of Engineers****Notice of Intent To Prepare a Draft Environmental Impact Statement on the Construction and Operation of the Everglades Agricultural Area A1 Flow Equalization Basin, Palm Beach County, FL****AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.**ACTION:** Notice of Intent (NOI).**SUMMARY:** The U.S. Army Corps of Engineers (USACE), Jacksonville

District, is in the preapplication phase of its evaluation of the anticipated application from the South Florida Water Management District (SFWMD) for a U.S. Department of the Army (DA) permit under Section 404 of the Clean Water Act for construction and operation of a Flow Equalization Basin (FEB) at the location of the Everglades Agricultural Area (EAA) A1 Reservoir project that was not fully constructed. The USACE regulates the discharge of dredged or fill material into Waters of the United States, including jurisdictional ditches and/or wetlands, associated with construction of any proposed action. The USACE anticipates a decision on the proposed activities would constitute a Major Federal Action in accordance with 40 CFR Section 1501.8. Based on the size of the project area, the current purpose for the site, and the potential environmental impacts, both individually and cumulatively, of the anticipated Proposed Action, the USACE intends to prepare an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) to inform any final decision on the permit application. The USACE's decision will be to either issue, issue with modifications to the applicant's proposal, or deny Department of the Army permits for the Proposed Action.

The Draft EIS is intended to be sufficient in scope to address federal and other requirements and environmental issues concerning the Proposed Action to support the Corps determination whether to issue a Section 404 permit. *The U.S. Environmental Protection Agency (U.S. EPA) and the U.S. Department of Interior (U.S. DOI) will be offered the option of being a cooperating agency on the EIS.*

**DATES:** The USACE plans to hold a public scoping meeting September 6, 2012, at 6:30 p.m. Eastern Standard Time (EST).

**ADDRESSES:** The public scoping meeting will be held at 3301 Gun Club Road, West Palm Beach, Florida 33406.

**FOR FURTHER INFORMATION CONTACT:** Questions about the Proposed Action and Draft EIS should be directed to Ms. Alisa Zarbo, (561) 472-3516 or by email at [Alisa.A.Zarbo@usace.army.mil](mailto:Alisa.A.Zarbo@usace.army.mil). Written comments should be addressed to the U.S. Army Corps of Engineers, Attn: Ms. Alisa Zarbo, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, FL, 33410, or by facsimile at (561) 626-6971.

**SUPPLEMENTARY INFORMATION:**

a. *Background/Project Authorization.* The USACE is preparing this Draft EIS in accordance with NEPA, Council of on Environmental Quality (CEQ) Regulations (40 CFR part 1500 *et seq.*), and USACE provisions for implementing the procedural requirements of NEPA (33 CFR part 230, USACE Engineering Regulation ER 200-2-2). A primary purpose of a USACE Regulatory Program EIS is to provide a comprehensive discussion of the significant environmental impacts of a proposal or project that may be the subject of a DA permit. The Draft EIS and Final EIS are used to inform the public and agency decision-makers of alternatives to an applicant's project and opportunities to avoid or minimize adverse impacts or enhance the quality of the human environment. The EIS is not a USACE regulatory decision document. It is used by agency officials in conjunction with other relevant information in a permit application file, including public and agency comments presented in the Final EIS, to inform the final decision on a permit application. In this instance, the SFWMD intends to submit a permit application to construct and operate a FEB on the site previously intended for the EAA A1 Reservoir known as the A1 Site. The purpose of the proposed action is to assist in meeting State of Florida water quality standards by attenuating peak stormwater flows and temporarily storing stormwater runoff from the central EAA which will improve inflow delivery rates to Stormwater Treatment Area (STA) 2 (including Compartment B) and STA 3/4. This project is anticipated to result in increased phosphorus removal performance in these STAs in order to meet State water quality standards.

b. *Need or Purpose.* The purpose of the proposed action is to attenuate peak stormwater flows into Stormwater Treatment Areas 2 and 3/4 to assist in meeting State water quality standards.

c. *Prior EAs, EISs.* In 2006, an EIS was completed for the A1 Reservoir site, which is expected to have the same footprint as the A1 FEB site; however, the project purpose and intended use for the A1 FEB is different. This Draft EIS will include the project purpose, evaluation of the FEB and its potential effects, evaluation of alternatives, relevant history and data, an evaluation of downstream effects based on current state of the environment with the FEB, and a jurisdictional determination.

d. *Alternatives.* An evaluation of alternatives to the proposed FEB project, including a No Action alternative will be performed. The Draft EIS will analyze reasonable alternatives to meet

the project purpose and need. Alternatives will be determined through scoping, but are expected to include at a minimum the A1 Reservoir in addition to a "no action" alternative.

e. *Issues.* The following issues have been identified for analysis in the Draft EIS. This list is preliminary and is intended to facilitate public comment on the scope of the Draft EIS. The Draft EIS will consider the effects on Federally listed threatened and endangered species, health and safety, socioeconomics, aesthetics, general environmental concerns, wetlands (and other aquatic resources), historic properties, cultural resources, fish and wildlife values, land use, transportation, recreation, water supply and conservation, water quality, energy needs, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people, and other issues identified through scoping, public involvement, and interagency coordination. At the present time, our primary areas of environmental concern are the loss of wetland functions and value, mitigation of such losses, the improvements in the downstream timing and delivery of water, and water quality. We expect to better define the issues of concern and define the methods that will be used to evaluate those issues through the scoping comment period.

f. *Scoping Process.* CEQ regulations (40 CFR 1501.7) require an early and open process for determining the scope of a Draft EIS and for identifying significant issues related to the proposed action.

The Corps is furnishing this notice to advise other Federal and State agencies, affected federally recognized Tribes, and the public of our intentions. This notice announces the initiation of a 30-day scoping period which requests the public's involvement in the scoping and evaluation process of the Draft EIS. Stakeholders will be notified through advertisements, public notices and other means. All parties who express interest will be given an opportunity to participate in this process. The process allows the Corps to obtain suggestions and information on the scope of issues and an opportunity to provide reasonable alternatives to be included in the Draft EIS. (See **DATES** and **ADDRESSES** for meeting schedules)

g. *Public Involvement.* The USACE invites Federal agencies, American Indian Tribal Nations, state and local governments, and other interested private organizations and parties to attend the public scoping meeting and to provide comments in order to ensure that all significant issues are identified

and the full range of issues related to the permit request are addressed.

h. *Coordination.* The proposed action is being coordinated with a number of Federal, state, regional, and local agencies including but not limited to the following: U.S. DOI, U.S. Fish and Wildlife Service, U.S. National Marine Fisheries Service, U.S. EPA, Florida Department of Environmental Protection, the federally recognized Native American Indian Tribes, Florida State Historic Preservation Officer, Palm Beach County, and other agencies as identified in scoping, public involvement, and agency coordination.

i. *Agency Role.* The Corps will be the lead agency for the EIS. The U.S. EPA and the U.S. DOI will be asked to be cooperating agencies. The Corps expects to receive input and critical information from the U.S. Fish and Wildlife Service, U.S. EPA, and other federal, state, and local agencies.

k. *A1 FEB Draft EIS Preparation.* It is estimated that the Draft EIS will be available to the public on or about December 2012. A Notice of Availability will be issued which will open the public comment period. Comments will be accepted during the Draft EIS public comment period which will last at least 30 days.

Dated: August 21, 2012.

**Donald W. Kinard,**

Chief, Regulatory Division.

[FR Doc. 2012-21186 Filed 8-27-12; 8:45 am]

**BILLING CODE 3720-58-P**

## DEPARTMENT OF EDUCATION

### President's Advisory Commission on Educational Excellence for Hispanics

**AGENCY:** U.S. Department of Education, White House Initiative on Educational Excellence for Hispanics.

**ACTION:** Notice of an Open Conference Call Meeting.

**SUMMARY:** This notice sets forth the announcement of a conference call meeting of the President's Advisory Commission on Educational Excellence for Hispanics. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of this meeting.

**DATES:** Friday, September 7, 2012.

**Time:** 4:00-5:00 p.m. Eastern Daylight Time.

**Conference Call Number/ID:** (712) 432-3900/ID—391333 (Listen-Only).

**ADDRESSES:** For members of the public who wish to convene in person and

listen to the conference call meeting, please arrive at the U.S. Department of Education, Lyndon Baines Johnson Building, Room 1W103, 400 Maryland Avenue SW., Washington, DC, no later than 3:30 p.m. Please RSVP to *WhiteHouseforHispanicEducation@ed.gov* by Thursday, September 6, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Marco A. Davis, Deputy Director, White House Initiative on Educational Excellence for Hispanics, 400 Maryland Ave. SW., Room 4W110, Washington, DC 20202; telephone: 202-453-7023.

**SUPPLEMENTARY INFORMATION:** The President's Advisory Commission on Educational Excellence for Hispanics (the Commission) is established by Executive Order 13555 (Oct. 19, 2010). The Commission is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92-463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Commission is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to the education attainment of the Hispanic community.

The Commission shall advise the President and the Secretary in the following areas: (i) Developing, implementing, and coordinating educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Hispanics of all ages; (ii) increasing the participation of the Hispanic community and Hispanic-Serving Institutions in the Department's programs and in education programs at other agencies; (iii) engaging the philanthropic, business, nonprofit, and education communities in a national dialogue regarding the mission and objectives of this order; (iv) establishing partnerships with public, private, philanthropic, and nonprofit stakeholders to meet the mission and policy objectives of this order.

**Agenda:**

The Commission will discuss the activities of its subcommittees and identify next steps.

Please be advised that members of the public will be able to listen only to the conference call meeting. There will not be an opportunity for public comment during this meeting due to time constraints. However, members of the public may submit written comments related to the work of the Commission via *WhiteHouseforHispanicEducation@ed.gov* no later than September 5,

2012. A recording of this meeting will be posted on the Commission's Web page at <http://www2.ed.gov/about/inits/list/hispanic-initiative/index.html> no later than Sep. 14, 2012.

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave. SW., Room 4W108, Washington, DC, 20202, Monday through Friday (excluding federal holidays) during the hours of 9 a.m. to 5 p.m.

*Electronic Access to the Document:* You may 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) on the Internet at: [www.ed.gov/fedregister/index.html](http://www.ed.gov/fedregister/index.html). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. For questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1-866-512-1830; or in the Washington, DC, area at 202-512-0000.

Dated: August 23, 2012.

**Martha Kanter,**

Under Secretary, U.S. Department of Education.

[FR Doc. 2012-21230 Filed 8-27-12; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Availability of Department of Energy EV Everywhere Grand Challenge Initial Framing Document and Request for Public Comment

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Notice of availability and request for public comment.

**SUMMARY:** The *EV Everywhere* Grand Challenge is a U.S. Department of Energy "Clean Energy Grand Challenge" with the goal of enabling U.S. companies to be the first in the world to produce plug-in electric vehicles (PEVs) that are as affordable and convenient for the average American family as today's gasoline-powered vehicles within the next 10 years. President Obama announced the *EV Everywhere* Challenge on March 7, 2012.

The *EV Everywhere* Initial Framing Document (framing document) has been developed as a principal means of facilitating stakeholder engagement in

the planning process. The framing document describes three potential combinations of PEVs and charging infrastructures, among other possible scenarios, and identifies preliminary technical targets for each of these vehicle and infrastructure scenarios.

The framing document is intended to serve as the common framework for stakeholder engagement through public information exchanges and public comment.

**DATES:** Public comments on this proposed framing document must be received on or before October 29, 2012 to ensure consideration.

**ADDRESSES:** Electronic mail comments may be submitted to: *ev-everywhere@ee.doe.gov*. Please include "EV Everywhere" in the subject line. Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Written comments should be sent to Mr. David Howell, Office of Energy Efficiency and Renewable Energy (EE-2G), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585-0121 or by fax at 202-586-1600, or by email at *ev-everywhere@ee.doe.gov*.

Respondents are encouraged to submit comments electronically to ensure timely receipt. The DOE EV Everywhere framing document can be accessed at <http://www1.eere.energy.gov/vehiclesandfuels/>.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. David Howell, Office of Energy Efficiency and Renewable Energy (EE-2G), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585-0121, or *ev-everywhere@ee.doe.gov*.

**SUPPLEMENTARY INFORMATION:** This notice requests public comment on the following questions related to the DOE *EV Everywhere* Grand Challenge and the framing document. Commenters are welcome to respond to all questions below, or only respond to select questions.

*A. EV Everywhere Mission and Scope:* Is the mission statement, "to enable U.S. companies to be the first in the world to produce plug-in electric vehicles (PEVs) that are as affordable and convenient for the average American family as today's gasoline-powered vehicles within the next 10 years" appropriate for the technology development and deployment programs

of the Department? Is the goal of developing "PEVs with a payback time of less than 5 years and sufficient range and fast-charging ability to allow the average American family to meet their daily transportation needs" appropriate? Is a payback time of less than 5 years the right measure of affordability or is there a more appropriate metric? Should the scope be limited to "PEVs in which the majority of miles driven are electric" or should the goal be "to maximize the national total of electric vehicle miles driven"?

*B. Plug-in Electric Vehicle Scenarios.* DOE has identified three potential vehicle/infrastructure scenarios that might achieve the *EV Everywhere* goals. These scenarios are:

1. A plug-in hybrid electric vehicle with a 40-mile all-electric range (PHEV-40) with limited fast-charge infrastructure;
2. An all-electric vehicle with a 100-mile range (AEV-100) with significant intra-city and inter-city fast charge infrastructure; and
3. An all-electric vehicle with a 300-mile range (AEV-300) with significant inter-city fast charge infrastructure.

Have we correctly identified and structured these three scenarios?

Are there other scenarios that are more appropriate?

*C. U.S. Plug-in Electric Vehicle Leadership.* How can DOE activities best support leadership in plug-in electric vehicle innovation? In PEV manufacturing? In PEV deployment? How do we balance international competitiveness against international cooperation?

*D. Program Definition and Management.* What principles should the Department follow for allocating resources among technologies of disparate maturity and potential time to impact? How many technology options should the Department pursue, and how should the value of that diversity be weighed against timeliness, scale, and cost-effectiveness? How can DOE be more effective at each stage of the innovation chain? Are technology targets (e.g., cost or deployment targets) useful markers to orient and structure DOE activities?

*E. Public/Private Partnership.* What are the optimal roles for the private sector, government laboratories, and academia in accelerating PEV technology innovation? How can DOE best coordinate activities between and among these types of organizations (including the wide variety of institutions within each class)? How should we gauge the effectiveness of this coordination? How can the basic research and applied research and

development coupling be optimized? Are there examples in other sectors or other countries that can serve as models? Are "technology user facilities" analogous to the Department's scientific user facilities possible, or even desirable? If so, what would be the most effective model for their operation? How can the Department best gather technology market information? How can information on private sector innovation be captured without compromising competitive advantage?

*G. Non-Technical Barriers.* A number of non-technical barriers—including Federal, State, and local regulations, market risks, and non-technical risks—impact the rate of deployment of PEV technologies. What role, if any, should the Department have in addressing these barriers?

*H. Technologies and Resources.* The initial framing document published in association with this announcement describes each of the three scenarios mentioned in part B in greater detail, and highlights several technologies that could contribute to success in each strategy. We welcome updated technology, cost, and forecast data.

The Department also welcomes comment on the format and tone of the framing document as well as identification of any factual errors or omissions of relevant facts and data. The Department also welcomes any additional comments related to the framing document and the *EV Everywhere* Grand Challenge, generally.

#### **Public Participation Policy**

It is the policy of the Department to ensure that public participation is an integral and effective part of DOE activities, and that decisions are made with the benefit of significant public input and perspectives.

The Department recognizes the many benefits to be derived from public participation for both stakeholders and DOE. Public participation provides a means for DOE to gather a diverse collection of opinions, perspectives, and values from the broadest spectrum of the public, enabling the Department to make more informed decisions. Public participation benefits stakeholders by creating an opportunity to provide input on decisions that affect their communities and our Nation.

In keeping with the President's commitment to transparency in Government, DOE will post online at <http://www1.eere.energy.gov/vehiclesandfuels/> all submissions received from external parties in response to this request for comment. In addition, DOE will discuss this framing document and the submissions received

from external parties with advisory committees, public information exchanges, and expert discussion groups.

Issued in Washington, DC, on August 16, 2012.

**Patrick B. Davis,**

*Program Manager, Vehicle Technologies Program, Energy Efficiency and Renewable Energy.*

[FR Doc. 2012-21242 Filed 8-27-12; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 14432-000]

#### Archon Energy 1, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14432-000.

c. *Date Filed:* July 9, 2012.

d. *Submitted By:* Archon Energy 1, Inc. (Archon).

e. *Name of Project:* 3-MW DaGuerre Point Dam Hydroelectric Project.

f. *Location:* To be located at the U.S. Army Corps of Engineers' DaGuerre Point Dam, on the Yuba River, near the City of Marysville, Yuba County, California.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Paul Grist, Archon Energy 1, Inc., 101 E. Kennedy Blvd., Suite 2800, Tampa, Florida 33602. (403) 618-2018.

i. *FERC Contact:* Kenneth Hogan at (202) 502-8434; or email at [kenneth.hogan@ferc.gov](mailto:kenneth.hogan@ferc.gov).

j. Archon filed its request to use the Traditional Licensing Process and provided public notice of its request on July 9, 2012. In a letter dated August 21, 2012, the Director of the Division of Hydropower Licensing approved Archon's request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Utah State Historic Preservation Officer, as

required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Archon as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act.

m. Archon filed a Pre-Application Document (PAD) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCONlineSupport@ferc.gov](mailto:FERCONlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 21, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012-21082 Filed 8-27-12; 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:* RP12-947-000.

*Applicants:* Eastern Shore Natural Gas Company.

*Description:* Negotiated Rate Agreement to be effective 9/16/2012.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816-5029.

*Comments Due:* 5 p.m. ET 8/28/12.

*Docket Numbers:* RP12-948-000.

*Applicants:* Columbia Gulf Transmission Company.

*Description:* Columbia Gulf Transmission Company submits Annual Cash-Out Report.

*Filed Date:* 08/16/2012.

*Accession Number:* 20120816-5065.

*Comments Due:* 5 p.m. ET 8/28/12.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

#### Filings in Existing Proceedings

*Docket Numbers:* RP12-843-001.

*Applicants:* Columbia Gulf Transmission Company.

*Description:* Gas Processing—Compliance to be effective 8/1/2012.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816-5089.

*Comments Due:* 5 p.m. ET 8/28/12.

*Docket Numbers:* RP12-945-001.

*Applicants:* High Point Gas Transmission, LLC.

*Description:* Compliance Filing to be effective 10/1/2012.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816-5096.

*Comments Due:* 5 p.m. ET 8/28/12.

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 5:00 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: August 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary*

[FR Doc. 2012-21134 Filed 8-27-12; 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:* ER12-2405-001.

*Applicants:* Helvetia Solar, LLC.

*Description:* Helvetia Solar, LLC submits tariff filing per 35.17(b):

Helvetia Substitute MBR Tariff to be effective 9/2/2012.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5099.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12–2469–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): Errata to Correct Metadata in PJM Service Agreement No. 3383—to be effective 7/20/2012.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5025.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12–2477–000.

*Applicants:* Southern California Edison Company.

*Description:* GIA & Distribution Serv Agmt 1370–1420 Victoria St Proj-Carson Dominguez Prop to be effective 8/21/2012.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5001.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12–2478–000.

*Applicants:* Southern California Edison Company.

*Description:* GIA & Distribution Serv Agmt 1650 Glenn Curtis St Carson Proj-Carson Dominguez to be effective 8/21/2012.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5002.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12–2479–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits tariff filing per 35: Order No. 760 Compliance Filing—Electronic Delivery of Data to be effective 8/20/2012.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5027.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12–2480–000.

*Applicants:* Alcoa Power Generating Inc.

*Description:* Alcoa Power Generating Inc. submits tariff filing per 35.13(a)(2)(iii): Yadkin OATT Revisions August 2012 to be effective 8/20/2012.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816–5121.

*Comments Due:* 5 p.m. ET 9/6/12.

*Docket Numbers:* ER12–2481–000

*Applicants:* New York Independent System Operator, Inc.

*Description:* New York Independent System Operator, Inc. submits tariff filing per 35: NYISO OATT Revisions in Compliance with Order No. 760 to be effective 3/4/2013.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5052.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12–2483–000.

*Applicants:* Kentucky Utilities Company.

*Description:* Kentucky Utilities Company Notice of Termination Estill County Generator Interconnection Agreement.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5044.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12–2484–000.

*Applicants:* LVI Power, LLC.

*Description:* LVI Power, LLC submits tariff filing per 35.12: Petition for Acceptance of Initial Tariff to be effective 8/21/2012.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5089.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12–2485–000.

*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.

*Description:* ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Revisions to MR1 to Forward Reserve Threshold Price to be effective 11/1/2012.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5100.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12–2486–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance Filing per FERC Order No. 760 requirements under RM11–17 to be effective 10/19/2012.

*Filed Date:* 8/20/12

*Accession Number:* 20120820–5101

*Comments Due:* 5 p.m. ET 9/10/12.

Take notice that the Commission received the following land acquisition reports:

*Docket Numbers:* LA12–2–000

*Applicants:* Niagara Generation, LLC.

*Description:* Quarterly Land Acquisition Report of Niagara Generation, LLC for second quarter 2012.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5090.

*Comments Due:* 5 p.m. ET 9/10/12.

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: August 20, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–21133 Filed 8–27–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–3417–001.

*Applicants:* Alta Wind VIII, LLC.

*Description:* Supplement to Notice of Non-Material Change in Status of Alta Wind VIII, LLC et al.

*Filed Date:* 5/30/12.

*Accession Number:* 20120530–5257.

*Comments Due:* 5 p.m. ET 9/4/12.

*Docket Numbers:* ER12–1653–001.

*Applicants:* New York Independent System Operator, Inc.

*Description:* New York Independent System Operator, Inc. submits tariff filing per 35: NYISO Compliance Filing: Order No. 755—Frequency Regulation to be effective 12/31/9998.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817–5149.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12–1838–000.

*Applicants:* Horse Butte Wind I LLC.

*Description:* Supplemental Notice of Horse Butte Wind I LLC.

*Filed Date:* 8/7/12.

*Accession Number:* 20120807–5155.

*Comments Due:* 5 p.m. ET 8/28/12.

*Docket Numbers:* ER12–2307–001.

*Applicants:* Escanaba Green Energy, LLC.

*Description:* Amendment of Pending Filing 132 to be effective 8/15/2012 under ER12–2307 Filing Type: 120.

*Filed Date:* 8/15/12.

*Accession Number:* 20120815–5109.

*Comments Due:* 5 p.m. ET 8/29/12.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 20, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012-21132 Filed 8-27-12; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-2317-009.  
*Applicants:* BE CA LLC.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et. al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2319-010.  
*Applicants:* BE Alabama LLC.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et. al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2320-010.  
*Applicants:* BE Allegheny LLC.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2322-011.  
*Applicants:* BE Ironwood LLC.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2324-010.  
*Applicants:* BE KJ LLC.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.

*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2325-009.  
*Applicants:* BE Louisiana LLC.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2326-011.  
*Applicants:* Cedar Brakes I, L.L.C.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2327-012.  
*Applicants:* Cedar Brakes II, L.L.C.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2328-010.  
*Applicants:* Central Power & Lime LLC.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2331-011.  
*Applicants:* J.P. Morgan Ventures Energy Corporation.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2332-010.  
*Applicants:* BE Rayle LLC.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2333-010.  
*Applicants:* J.P. Morgan Commodities Canada Corporation.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2343-011.  
*Applicants:* J.P. Morgan Commodities Canada Corporation.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER10-2898-010.  
*Applicants:* Utility Contract Funding II, L.L.C.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.

*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER11-4052-001.  
*Applicants:* HIKO Energy, LLC, Alpha Gas and Electric, LLC.  
*Description:* Notice of Non-Material Change in Status of Alpha Gas and Electric, LLC, et. al.  
*Filed Date:* 8/16/12.  
*Accession Number:* 20120816-5115.  
*Comments Due:* 5 p.m. ET 9/6/12.  
*Docket Numbers:* ER11-4533-001.  
*Applicants:* HIKO Energy, LLC, Alpha Gas and Electric, LLC.  
*Description:* Notice of Non-Material Change in Status of Alpha Gas and Electric, LLC, et. al.  
*Filed Date:* 8/16/12.  
*Accession Number:* 20120816-5115.  
*Comments Due:* 5 p.m. ET 9/6/12.  
*Docket Numbers:* ER11-4609-009.  
*Applicants:* Triton Power Michigan LLC.  
*Description:* JPMorgan Sellers Notice of Non-Material Change in Status re: High Majestic II, et al.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5084.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER12-1800-002.  
*Applicants:* Public Service Company of New Mexico.  
*Description:* OATT Attachment R Amended Compliance Filing to be effective 7/16/2012.  
*Filed Date:* 8/16/12.  
*Accession Number:* 20120816-5080.  
*Comments Due:* 5 p.m. ET 9/6/12.  
*Docket Numbers:* ER12-2433-001.  
*Applicants:* NorthWestern Corporation.  
*Description:* NorthWestern Corporation submits tariff filing per 35.17(b): SA 644—Carter Grain Terminal Project (amendment) to be effective 8/13/2012.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5099.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER12-2460-000.  
*Applicants:* NV Energy, Inc.  
*Description:* Service Agreement No. 08-02520 Amended & Restated LGIA SPPC-ORNI 16 to be effective 8/3/2012.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5002.  
*Comments Due:* 5 p.m. ET 9/7/12.  
*Docket Numbers:* ER12-2461-000.  
*Applicants:* NorthWestern Corporation.  
*Description:* Service Agreement No. 277—Ravalli Coop—Woodside to be effective 6/14/2012.  
*Filed Date:* 8/17/12.  
*Accession Number:* 20120817-5053.  
*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2462-000.  
*Applicants:* Southern California Edison Company.

*Description:* GIA and Distribution Service Agreement CBP 19 Acres, LLC to be effective 8/18/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5067.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2463-000.

*Applicants:* Westar Energy, Inc.  
*Description:* Westar Energy, Inc. submits Notice of Cancellation of certain designated rate schedules and service agreements.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5079.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2464-000.

*Applicants:* NorthWestern Corporation.

*Description:* NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii): SA 586—Revision 1 to Amended GIA with PPL Montana to be effective 10/16/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5081.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2465-000.

*Applicants:* Ingenco Wholesale Power, L.L.C.

*Description:* Ingenco Wholesale Power, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Notice of Change in Status to be effective 9/17/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5083.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2466-000.

*Applicants:* PJM Interconnection, L.L.C., American Transmission Systems, Incorporation.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): ATSI submits PJM SA No. 3391 a CSA among ATSI, Buckeye and Tricounty to be effective 7/26/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5091.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2467-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Original Service Agreement No. 3388—Queue Position #T107 to be effective 7/25/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5094.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2469-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per

35.13(a)(2)(iii): Original Service Agreement No. 3383—Queue Position X4-004 to be effective 7/20/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5098.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2470-000.

*Applicants:* Midwest Independent Transmission System.

*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 38.9.3A E-Data Compliance to be effective 8/20/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5112.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2471-000.

*Applicants:* Midwest Independent Transmission System.

*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Sa 2465 Rock Aetna-Northern States GIA G621 to be effective 8/18/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5121.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2472-000.

*Applicants:* New England Power Company.

*Description:* New England Power Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule CRA-NEP-02—Cost Allocation Agreement with NSTAR Electric Co. to be effective 8/18/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5126.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2473-000.

*Applicants:* NorthWestern Corporation.

*Description:* NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii): SA 641—Conrad Grain Terminal Transmission Line Relocate to be effective 6/29/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5134.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2474-000.

*Applicants:* Golden Spread Electric Cooperative, Inc.

*Description:* Golden Spread Electric Cooperative, Inc. submits tariff filing per 35: Pleasant Hill SGIA to be effective 7/23/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5137.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2475-000.

*Applicants:* Footprint Power Salem Harbor Operations.

*Description:* Footprint Power Salem Harbor Operations LLC submits tariff filing per 35.12: Footprint Salem Harbor

Notice of Succession and Change of Status Filing to be effective 8/17/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5139.

*Comments Due:* 5 p.m. ET 9/7/12.

*Docket Numbers:* ER12-2476-000.

*Applicants:* New England Power Company.

*Description:* New England Power Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule CRA-NEP-03—Cost Allocation Agreement with NSTAR Electric Co. to be effective 8/18/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817-5140.

*Comments Due:* 5 p.m. ET 9/7/12.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012-21131 Filed 8-27-12; 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:* EG12-100-000.

*Applicants:* Ri-Corp. Development, Inc.

*Description:* Notice of Self-Certification of EWG Status of Ri-Corp. Development, Inc.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816-5040.

*Comments Due:* 5 p.m. ET 9/6/12.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12-1204-001.

*Applicants:* PJM Interconnection, L.L.C.  
*Description:* Compliance filing per 5/17/2012 Order in ER12–1204 regarding Order 755 to be effective 10/1/2012.

*Filed Date:* 8/15/12.

*Accession Number:* 20120815–5104.

*Comments Due:* 5 p.m. ET 9/5/12 .

*Docket Numbers:* ER12–1929–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Compliance Filing per 7/31/2012 Order in Docket No. ER12–1929 to be effective 8/1/2012.

*Filed Date:* 8/15/12.

*Accession Number:* 20120815–5101.

*Comments Due:* 5 p.m. ET 9/5/12 .

*Docket Numbers:* ER12–2447–001.

*Applicants:* Brookfield Smoky Mountain Hydropower LLC.

*Description:* Amendment of Pending Filing 135 to be effective 10/13/2012.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816–5036.

*Comments Due:* 5 p.m. ET 9/6/12 .

*Docket Numbers:* ER12–2453–000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* SA 2294 Heritage Garden-ATC GIA J060/J061 to be effective 8/17/2012.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816–5022.

*Comments Due:* 5 p.m. ET 9/6/12.

*Docket Numbers:* ER12–2454–000.

*Applicants:* San Diego Gas & Electric Company.

*Description:* San Diego Gas & Electric Company's TO3—Cycle 6 Base Period Cost of Service, Forecast Period Revenues, True-Up Period Adjustment, Retail Rate Design, & CAISO Wholesale High Voltage Transmission Access Charge Components.

*Filed Date:* 8/15/12.

*Accession Number:* 20120816–0204.

*Comments Due:* 5 p.m. ET 9/5/12.

*Docket Numbers:* ER12–2455–000.

*Applicants:* Midwest Independent Transmission System Operator, Inc., MidAmerican Energy Company.

*Description:* SA 2245 MidAm-Lake View WDS to be effective 9/1/2012.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816–5024.

*Comments Due:* 5 p.m. ET 9/6/12.

*Docket Numbers:* ER12–2456–000.

*Applicants:* Ri-Corp. Development, Inc.

*Description:* Notice of Succession to be effective 8/17/2012.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816–5035.

*Comments Due:* 5 p.m. ET 9/6/12 .

*Docket Numbers:* ER12–2457–000.

*Applicants:* Alcoa Power Generating Inc.

*Description:* Tapoco OATT Filing to be effective 8/20/2012.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816–5046.

*Comments Due:* 5 p.m. ET 9/6/12.

*Docket Numbers:* ER12–2458–000.

*Applicants:* PacifiCorp.

*Description:* PAC Energy Construction Agreement to Move Projects into PacifiCorp's BA to be effective 10/16/2012.

*Filed Date:* 8/16/12.

*Accession Number:* 20120816–5047.

*Comments Due:* 5 p.m. ET 9/6/12.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA12–5–000.

*Applicants:* The City of Lincoln, Nebraska.

*Description:* Request for continuation of waiver of Standards of Conduct for The City of Lincoln, Nebraska, or in the alternative, request for extension of time to comply with the Standards of Conduct.

*Filed Date:* 8/15/12.

*Accession Number:* 20120815–5143.

*Comments Due:* 5 p.m. ET 9/5/12.

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: August 16, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–21130 Filed 8–27–12; 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:* RP12–949–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Tenaska Gas Storage to be effective 8/16/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817–5042.

*Comments Due:* 5 p.m. ET 8/29/12.

*Docket Numbers:* RP12–950–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Negotiated Rate Filing—Tenaska Gas Storage to be effective 8/16/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817–5046.

*Comments Due:* 5 p.m. ET 8/29/12.

*Docket Numbers:* RP12–951–000.

*Applicants:* El Paso Natural Gas Company.

*Description:* El Paso Natural Gas Company submits tariff filing per 154.204: EPNG Name Change to L.L.C. to be effective 9/18/2012.

*Filed Date:* 8/17/12.

*Accession Number:* 20120817–5153.

*Comments Due:* 5 p.m. ET 8/29/12.

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.

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: August 20, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary*

[FR Doc. 2012–21129 Filed 8–27–12; 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:* RP12–936–000.

*Applicants:* National Fuel Gas Supply Corporation.

*Description:* Price Index to be effective 9/8/2012.

*Filed Date:* 8/9/12.

*Accession Number:* 20120809–5099.

*Comments Due:* 5 p.m. ET 8/21/12.

*Docket Numbers:* RP12–940–000.

*Applicants:* Trailblazer Pipeline Company LLC.

*Description:* 2012–08–13 NCs to be effective 8/14/2012.

*Filed Date:* 8/13/12.

*Accession Number:* 20120813–5128.

*Comments Due:* 5 p.m. ET 8/27/12.

*Docket Numbers:* RP12–942–000.

*Applicants:* Trailblazer Pipeline Company LLC.

*Description:* 2012/08/14 NC Mico, CIMA to be effective 8/15/2012.

*Filed Date:* 8/14/12.

*Accession Number:* 20120814–5122.

*Comments Due:* 5 p.m. ET 8/27/12.

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.

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 August 15, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–21128 Filed 8–27–12; 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:* RP12–954–000.

*Applicants:* Gulf South Pipeline Company, LP.

*Description:* Sequent 34693–12 Amendment to Neg Rate Agmt to be effective 8/21/2012.

*Filed Date:* 8/22/12.

*Accession Number:* 20120822–5012.

*Comments Due:* 5 p.m. ET 9/4/12.

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:* RP12–816–001.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* Required Interim Rates Compliance to be effective 12/31/9998.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820–5154.

*Comments Due:* 5 p.m. ET 9/4/12.

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: August 22, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–21141 Filed 8–27–12; 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:* RP12–943–000.

*Applicants:* Bison Pipeline LLC.

*Description:* ACA Change to be effective 10/1/2012.

*Filed Date:* 8/15/12.

*Accession Number:* 20120815–5017.

*Comments Due:* 5 p.m. ET 8/27/12.

*Docket Numbers:* RP12–944–000.

*Applicants:* CenterPoint Energy—Mississippi River T.

*Description:* Revision to Section 22—Fuel Tracker Language to be effective 9/15/2012.

*Filed Date:* 8/15/12.

*Accession Number:* 20120815–5040.

*Comments Due:* 5 p.m. ET 8/27/12.

*Docket Numbers:* RP12–945–000.

*Applicants:* High Point Gas Transmission, LLC.

*Description:* FERC Gas Tariff Baseline Filing and Compliance Filing to be effective 10/1/2012.

*Filed Date:* 8/14/12.

*Accession Number:* 20120814–5155.

*Comments Due:* 5 p.m. ET 8/27/12.

*Docket Numbers:* RP12–946–000.

*Applicants:* Trailblazer Pipeline Company LLC.

*Description:* 2012–08–15 NC to be effective 8/16/2012.

*Filed Date:* 8/15/12.

*Accession Number:* 20120815–5103.

*Comments Due:* 5 p.m. ET 8/27/12.

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.

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: August 16, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–21140 Filed 8–27–12; 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:* ER12–2492–000.

*Applicants:* Emera Energy Services Subsidiary No. 6 LLC.

*Description:* Application for MBR Authority of Emera Energy Services Subsidiary No. 6 to be effective 10/20/2012.

*Filed Date:* 8/21/12.

*Accession Number:* 20120821-5049.

*Comments Due:* 5 p.m. ET 9/11/12.

*Docket Numbers:* ER12-2493-000.

*Applicants:* Emera Energy Services Subsidiary No. 7 LLC.

*Description:* Emera Energy Services Subsidiary No. 7 LLC submits tariff filing per 35.12: Application for MBR Authority of Emera Energy Services Subsidiary No. 7 to be effective 10/20/2012.

*Filed Date:* 8/21/12.

*Accession Number:* 20120821-5052.

*Comments Due:* 5 p.m. ET 9/11/12.

*Docket Numbers:* ER12-2494-000.

*Applicants:* Emera Energy Services Subsidiary No. 8 LLC.

*Description:* Emera Energy Services Subsidiary No. 8 LLC submits tariff filing per 35.12: Application for MBR Authority of Emera Energy Services Subsidiary No. 8 to be effective 10/20/2012.

*Filed Date:* 8/21/12.

*Accession Number:* 20120821-5053.

*Comments Due:* 5 p.m. ET 9/11/12.

*Docket Numbers:* ER12-2495-000.

*Applicants:* Emera Energy Services Subsidiary No. 9 LLC.

*Description:* Emera Energy Services Subsidiary No. 9 LLC submits tariff filing per 35.12: Application for MBR Authority of Emera Energy Services Subsidiary No. 9 to be effective 10/20/2012.

*Filed Date:* 8/21/12.

*Accession Number:* 20120821-5054.

*Comments Due:* 5 p.m. ET 9/11/12.

*Docket Numbers:* ER12-2496-000.

*Applicants:* Emera Energy Services Subsidiary No. 10.

*Description:* Emera Energy Services Subsidiary No. 10 submits tariff filing per 35.12: Application for MBR Authority of Emera Energy Services Subsidiary No. 10 to be effective 10/20/2012.

*Filed Date:* 8/21/12.

*Accession Number:* 20120821-5059.

*Comments Due:* 5 p.m. ET 9/11/12.

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: August 21, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012-21139 Filed 8-27-12; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC12-135-000.

*Applicants:* Energia Sierra Juarez U.S., LLC.

*Description:* Section 203 Application of Energia Sierra Juarez U.S., LLC.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820-5183.

*Comments Due:* 5 p.m. ET 9/10/12.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-2763-004; ER10-2732-004; ER10-2733-004; ER10-2734-004; ER10-2736-004; ER10-2737-004; ER10-2741-004; ER10-2749-004; ER10-2752-004.

*Applicants:* Emera Energy Services Inc., Emera Energy Services Subsidiary No. 1 LLC, Emera Energy Services Subsidiary No. 2 LLC, Emera Energy Services Subsidiary No. 3 LLC, Emera Energy Services Subsidiary No. 4 LLC, Emera Energy Services Subsidiary No. 5 LLC, Emera Energy U.S. Subsidiary No. 1, Inc., Emera Energy U.S. Subsidiary No. 2, Inc., Bangor Hydro Electric Company.

*Description:* Report of Changes in Status Bangor Hydro Electric Company, *et al.*

*Filed Date:* 8/20/12.

*Accession Number:* 20120820-5181.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12-668-001.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* 8-20-2012 ELMP Compliance Filing to be effective 12/31/9998.

*Filed Date:* 8/21/12.

*Accession Number:* 20120821-5003.

*Comments Due:* 5 p.m. ET 9/11/12.

*Docket Numbers:* ER12-1265-003.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* [clarson@misoenerg.org](mailto:clarson@misoenerg.org) to be effective 6/12/201.

*Filed Date:* 8/21/12.

*Accession Number:* 20120821-5007.

*Comments Due:* 5 p.m. ET 9/11/12.

*Docket Numbers:* ER12-1835-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits deficiency response.

*Filed Date:* 8/21/12.

*Accession Number:* 20120821-5029.

*Comments Due:* 5 p.m. ET 9/11/12.

*Docket Numbers:* ER12-2488-000.

*Applicants:* California Independent System Operator Corporation.

*Description:* CAISO Order No. 760 Compliance Filing to be effective 8/20/2012.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820-5123.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12-2489-000.

*Applicants:* New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

*Description:* Interconnection Agreement No. 1913 between NiMo and Village of Solway to be effective 6/18/2012.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820-5147.

*Comments Due:* 5 p.m. ET 9/10/12.

*Docket Numbers:* ER12-2490-000.

*Applicants:* Southern California Edison Company.

*Description:* GIA & Distribution Service Agreement Houweling Nurseries Oxnard, Inc. to be effective 8/10/2012.

*Filed Date:* 8/21/12.

*Accession Number:* 20120821-5005.

*Comments Due:* 5 p.m. ET 9/11/12.

*Docket Numbers:* ER12-2491-000.

*Applicants:* Niagara Mohawk Power Corporation.

*Description:* Notice of Cancellation of Service Agreements and Request for Waiver of Commission Notice Requirements of Niagara Mohawk Power Corporation.

*Filed Date:* 8/20/12.

*Accession Number:* 20120820-5185.

*Comments Due:* 5 p.m. ET 9/10/12.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 21, 2012.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2012-21138 Filed 8-27-12; 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:* ER12-2449-000.  
*Applicants:* Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy Services, Inc.

*Description:* EMI-Quantum 2nd Rev. SA 535 to be effective 5/31/2012.

*Filed Date:* 8/14/12.

*Accession Number:* 20120814-5125.  
*Comments Due:* 5 p.m. ET 9/4/12.

*Docket Numbers:* ER12-2450-000.  
*Applicants:* PJM Power Marketing LLC.

*Description:* Market-Based Rates Tariff to be effective 8/14/2012.

*Filed Date:* 8/15/12.

*Accession Number:* 20120815-5000.  
*Comments Due:* 5 p.m. ET 9/5/12.

*Docket Numbers:* ER12-2451-000.  
*Applicants:* El Paso Electric Company.

*Description:* El Paso Electric Company submits tariff filing per 35.15: Termination of Rate Schedule No. 110 LGIA with Mescalero Ridge to be effective 7/16/2012.

*Filed Date:* 8/15/12.

*Accession Number:* 20120815-5098.  
*Comments Due:* 5 p.m. ET 9/5/12.

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: August 15, 2012.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2012-21137 Filed 8-27-12; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12-2387-001.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* Request for Deferral of Commission Action On Docket ER12-2387 to be effective 12/31/9998.

*Filed Date:* 8/14/12.

*Accession Number:* 20120814-5115.  
*Comments Due:* 5 p.m. ET 9/4/12.

*Docket Numbers:* ER12-2447-000.  
*Applicants:* Brookfield Smoky Mountain Hydropower LLC.

*Description:* Brookfield Smoky Mountain Hydropower LLC, FERC Electric Tariff No. 1 to be effective 10/13/2012.

*Filed Date:* 8/14/12.

*Accession Number:* 20120814-5112.  
*Comments Due:* 5 p.m. ET 9/4/12.

*Docket Numbers:* ER12-2448-000.  
*Applicants:* Chisholm View Wind Project, LLC.

*Description:* Chisholm View Wind Project, LLC MBR Tariff to be effective 9/15/2012.

*Filed Date:* 8/14/12.

*Accession Number:* 20120814-5123.  
*Comments Due:* 5 p.m. ET 9/4/12.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES12-51-000.  
*Applicants:* MidAmerican Energy Company.

*Description:* MidAmerican Energy Company's Application Under Section 204 of the Federal Power Act for Authorization to Issue and Sell Debt Securities.

*Filed Date:* 8/14/12.

*Accession Number:* 20120814-5144.  
*Comments Due:* 5 p.m. ET 9/4/12.

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: August 15, 2012.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2012-21136 Filed 8-27-12; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 14368-000-CO]

#### Catamount Metropolitan District; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a small hydropower project exemption for the Catamount Hydroelectric Project, to be located at the existing Catamount dam and Lake Catamount in Routt County, near the City of Steamboat Springs, in the state of Colorado, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyzed the potential environmental effects of the proposed project and concludes that issuing an exemption for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also 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](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

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.

Any comments should be filed within 30 days from the date of this notice. Comments 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. 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. Please affix Project No. 14368-000 to all comments.

For further information, contact Shana Murray at (202) 502-8333 or by email at [shana.murray@ferc.gov](mailto:shana.murray@ferc.gov).

Dated: August 21, 2012.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2012-21081 Filed 8-27-12; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Project No. 13417-002-WI]

**Western Technical College; Notice of Availability of Environmental Assessment**

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47,897), the Office of Energy Projects has reviewed the application for an original license to construct the Angelo Dam Hydropower Project, and has prepared an environmental assessment (EA). The proposed 205-kilowatt project would be located on the La Crosse River in the Township of Angelo, Monroe County, Wisconsin at an existing dam owned by Monroe County. The project would not occupy federal lands.

The EA includes staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA 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](mailto:FERCOnlineSupport@ferc.gov), or toll-free at (866) 208-3676, or for TTY, (202) 502-8659.

You may also register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via email of new filings and issuances related to this or other

pending projects. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

Any comments should be filed within 30 days from the date of this notice. Comments 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/doc-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 Commission Online Support. 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. Please affix Angelo Dam Hydropower Project, P-13417-002 to all comments.

Please contact Isis Johnson by telephone at (202) 502-6346, or by email at [isis.johnson@ferc.gov](mailto:isis.johnson@ferc.gov), if you have any questions.

Dated: August 22, 2012.

**Kimberly D. Bose,**  
Secretary.

**Environmental Assessment for Hydropower License; Angelo Dam Hydropower Project**

*FERC Project No. 13417-002; Wisconsin*

Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing, 888 First Street NE., Washington, DC 20426.

August 2012.

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**Acronyms and Abbreviations**

APE area of potential effects  
 basin Bad Axe—La Crosse River Basin  
 BMP best management practice  
 cfs cubic feet per second  
 Commission Federal Energy Regulatory Commission  
 CWA Clean Water Act  
 CZMA Coastal Zone Management Act  
 DO dissolved oxygen  
 EA environmental assessment  
 EPA Environmental Protection Agency  
 EPRI Electric Power Research Institute  
 ESA Endangered Species Act

°F degrees Fahrenheit  
 FERC Federal Energy Regulatory Commission  
 FPA Federal Power Act  
 FWS U.S. Fish and Wildlife Service  
 fps feet per second  
 HCP Wisconsin Habitat Conservation Plan  
 HPMP historic properties management plan  
 Interior U.S. Department of the Interior  
 kV kilovolt  
 kW kilowatt  
 kWh kilowatt-hour  
 msl mean sea level  
 MW megawatt  
 MWh megawatt-hour

Michigan SHPO Michigan State Historic Preservation Officer  
 MRO Midwest Reliability Organization  
 MISO Midwest Independent System Operator  
 National Register National Register of Historic Places  
 NEPA National Environmental Policy Act of 1969  
 NERC North American Electric Reliability Council  
 NHPA National Historic Preservation Act  
 PA Programmatic Agreement  
 project Angelo Dam Hydroelectric Project

SCADA Supervisory Control and Data Acquisition  
watershed Upper La Crosse River Watershed  
Western Western Technical College  
Wisconsin CMP Wisconsin Coastal Management Program Office  
Wisconsin DNR Wisconsin Department of Natural Resources  
Wisconsin SHPO Wisconsin State Historic Preservation Officer  
WQC water quality certificate

### Executive Summary

On October 21, 2011, Western Technical College (Western) filed an application with the Federal Energy Regulatory Commission (Commission) for an original, minor license to construct, operate, and maintain the proposed 205-kilowatt (kW) Angelo Dam Hydropower Project No. 13417-002 (project). The project would be located on the La Crosse River in the Township of Angelo, Monroe County, Wisconsin at the existing Angelo dam owned by Monroe County. The project would not occupy federal lands.

### Existing Facilities and Operation

The Angelo dam was built by Northern States Power in the 1920's. Northern States Power generated electricity at the Angelo dam until 1969 and then removed the generating equipment and transferred the dam and associated reservoir (Angelo Pond) to Monroe County. In 1998, Monroe County rehabilitated the dam.

The Angelo dam has a total length of 615.5 feet and is composed of a left earthen embankment, a concrete spillway and non-overflow structure, and a right earthen embankment. The left earthen embankment has a length of 400 feet and a maximum height of approximately 14 feet. The right earthen embankment has a length of 124 feet and a maximum height of approximately 12 feet. The spillway and non-overflow section are constructed of reinforced concrete and have a total length of 91.5 feet. The spillway is 72.42 feet long and 9.6 feet high from the foundation level to its crest. The spillway has four, 13.5-foot-wide by 11.4-foot-high bays each with 13.5-foot-wide by 6.9-foot-high steel tainter gates. The non-overflow section is 19.08 feet long, 20 feet high, and 19.7 feet wide.

The reservoir has a surface area of 52 acres at elevation 793 feet mean sea level (msl). The reservoir's storage capacity is 450 acre-feet at the dam's crest elevation of 795 feet msl.

The dam and reservoir currently provide recreational benefits to the project area. There is no hydroelectric generation at the dam. The dam is operated manually in a run-of-river

mode (i.e., an operating mode where outflows from the dam and reservoir approximate inflows to the reservoir).

### Proposed Facilities and Operation

Western proposes to acquire the rights to and utilize the Angelo dam and reservoir for power generation. Western would convert the dam's non-overflow section to serve as the project's intake. The conversion would involve removing a concrete cap and plug that was poured in 1998 when the dam was rehabilitated. Western would also construct, operate, and maintain the following facilities at the dam and reservoir: (1) A 22.84-foot-long by 16.08-foot-wide trashrack with 2-inch-clear bar spacing installed at the intake in the non-overflow section; (2) a 20-foot by 20-foot by 20-foot reinforced concrete box forebay; (3) a 26-foot-long by 24.5-foot-wide by 40-foot-high powerhouse located at the right abutment of the dam and containing a 205-kW vertical, double-regulated Kaplan turbine; (4) a 30-foot-long, 480-volt overhead transmission line connecting the powerhouse generator to a step-up transformer that would be located on a pole which is part of Northern States Power's 2.7-kilovolt (kV) distribution line; and (5) appurtenant facilities.

The project would be operated in a run-of-river mode using the natural flow of the La Crosse River. The estimated average annual project generation is about 950 megawatt-hours (MWh).

### Proposed Environmental Measures

Western proposes the following environmental measures to protect or enhance resources in the vicinity of the proposed project:

- An erosion and sediment control plan with provisions for using best management practices, including installing a temporary inflatable cofferdam, and placing hay bales and siltation fabric at locations where sediment-laden runoff could otherwise enter project waters or adjacent non-project lands;
- Operating the project in a run-of-the-river mode to protect water quality and quantity, and fish and aquatic resources; and
- Implementing the Commission's statewide programmatic agreement (PA) for projects in Wisconsin, and implementing a Historic Properties Management Plan (HPMP) for the project.

Western also proposes to comply with all state water quality standards while operating the project. In this environmental assessment (EA), we consider Western's proposal to comply with state water quality standards (i.e.,

state law) to be a general legal matter rather than a specific environmental measure.

### Alternatives Considered

In addition to Western's proposed action, this EA considers Western's proposed action with staff's modifications (staff alternative), and a no-action alternative. Under the staff alternative, the project would be constructed, operated, and maintained as proposed by Western. The staff alternative also includes a recommendation for Western to develop and implement an operation compliance monitoring plan for proposed run-of-river operations at the project. Under the no-action alternative, a license would be denied and Western would not construct and operate the project.

### Public Involvement

Before filing its license application, Western conducted pre-filing consultation under the traditional licensing process. The intent of the Commission's pre-filing process is to initiate public involvement early in the project planning process and to encourage citizens, governmental entities, tribes, and other interested parties to identify and resolve issues prior to an application being formally filed with the Commission.

Western filed its license application on October 21, 2011. On April 24, 2012, the Commission issued a notice accepting the license application; soliciting motions to intervene, protests, comments, terms and conditions, recommendations, and prescriptions; stating that the application was ready for environmental analysis; stating staff's intent to waive scoping; and establishing an expedited schedule for processing. The notice explained that staff intended to waive scoping due to the project's use of an existing dam, the limited scope of proposed construction at the project site, the applicant's close coordination with federal and state agencies during the preparation of the application, and the completion of studies during pre-filing consultation. The United States Department of the Interior (Interior) was the only entity that filed a written response to the notice. Interior stated that it had no comments.

The primary issues associated with licensing the project are the potential for project effects on soil erosion and sedimentation, water quality and fish entrainment.

*Project Effects***Geology and Soils**

Project construction would require the excavation of approximately 135 cubic yards of bedrock during the construction of the proposed powerhouse and forebay. To minimize the potential for erosion and sedimentation related to the excavation, under the applicant's proposal and staff alternative, Western would develop and implement an erosion and sediment control plan.

**Aquatic Resources**

Under the proposed action and the staff alternative, developing and implementing an erosion and sediment control plan would limit erosion, sedimentation, and increases in river turbidity.

Under the proposed action and staff alternative, fish could be entrained through the project's trashrack and intake, and therefore, be subjected to turbine mortality during operation of the project. However, the amount of entrainment and turbine mortality would likely be small and result in an overall minimal adverse effect on the project reservoir's (Angelo Pond's) fish community.

Under both the proposed action and staff alternative, run-of-river operation would maintain current aquatic resource habitats in Angelo Pond and in the La Crosse River downstream of the Angelo dam.

**Terrestrial Resources**

While some grassy areas may be temporarily disturbed and soils slightly compacted by the movement of equipment and personnel during construction, no long-term adverse effects to terrestrial resources are anticipated, as the construction area would be relatively small, and occur in an area that has been previously disturbed. Also, the project site is fairly developed and lacks quality habitat for wildlife.

Two federally listed species are known to occur in Monroe County, namely the Karner blue butterfly (*Lycaeides melissa samuelis* or Karners) and northern wild monkshood (*Aconitum noveboracense*). However, both species have specialized habitat requirements that do not exist in the immediate vicinity of the project. Therefore, project construction and operation would have no effect on federally listed threatened or endangered species.

**Cultural**

Western conducted cultural resource surveys, covering about 83 percent of the land within the project's area of potential effects (APE). During the surveys, Western found no archaeological resources that would be eligible for the National Register of Historic Places (National Register). For the unsurveyed areas, an executed PA and HPMP contain protocols that would be implemented if there are any unanticipated discoveries. The HPMP also contains provisions to lessen, avoid, or mitigate for any adverse effects if the discovered resources are eligible for the National Register.

*No-Action Alternative*

Under the no-action alternative, a license would be denied, the project would not be constructed, environmental resources in the project area would not be affected, and the renewable energy that would be produced by the project would not be developed.

*Conclusion*

Based on our analysis, we recommend licensing the project under the staff alternative.

In section 4.0 of the EA, we estimate the likely cost of alternative power for the two action alternatives identified above. Our analysis shows that during the first year of operation under the proposed action alternative, project power would cost \$81,589 or \$86.20/MWh less than the likely alternative cost of power. Under the staff alternative, project power would cost \$81,297 or \$85.47/MWh less than the likely alternative cost of power.

We chose the staff alternative as the preferred alternative because: (1) The project would provide a dependable source of electrical energy for the region (about 950 MWh annually); (2) the 205 kW of electric capacity available comes from a renewable resource which does not contribute to atmospheric pollution; and (3) the recommended environmental measures proposed by Western, as modified by staff, would adequately protect and enhance environmental resources affected by the project. The overall benefits of the staff alternative would be worth the cost of the proposed and recommended environmental measures.

We conclude that issuing an original license for the project, with the environmental measures we recommend, would not constitute a major federal action significantly affecting the quality of the human environment.

**Environmental Assessment****Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing, Washington, DC**

*Angelo Dam Hydropower Project; FERC Project No. 13417-002*

**1.0 Introduction***1.1 Application*

On October 21, 2011, Western Technical College (Western) filed an application with the Federal Energy Regulatory Commission (Commission) for an original, minor license to construct, operate, and maintain the proposed 205-kilowatt (kW) Angelo Dam Hydropower Project No. 13417-002 (Angelo Dam Project or project). The project would be located on the La Crosse River in the Township of Angelo, Monroe County, Wisconsin at an existing dam (the Angelo dam) owned by Monroe County and regulated by the Wisconsin Department of Natural Resources (Wisconsin DNR). The estimated average annual project generation is 948.5 megawatt-hours (MWh). The proposed project would not occupy federal lands.

**1.2 Purpose of Action and Need for Power***1.2.1 Purpose of Action*

The purpose of the proposed Angelo Dam Project is to provide a new source of hydroelectric power. Therefore, under the provisions of the Federal Power Act (FPA), the Commission must decide whether to issue a license to Western for the Angelo Dam Project and what conditions should be placed on any license issued. In deciding whether to issue a license for a hydroelectric project, the Commission must determine that the project will be best adapted to a comprehensive plan for improving or developing a waterway. In addition to the power and developmental purposes for which licenses are issued (such as flood control, irrigation, or water supply), the Commission must give equal consideration to the purposes of: (1) Energy conservation; (2) the protection of, mitigation of damage to, and enhancement of fish and wildlife resources; (3) the protection of recreational opportunities; and (4) the preservation of other aspects of environmental quality.

Issuing an original license for the Angelo Dam Project would allow Western to generate electricity for the term of an original license, making electric power from a renewable resource available to its customers.

This environmental assessment (EA) assesses the effects associated with Western's proposed operation of the project and alternatives to the proposed project. The EA also makes recommendations to the Commission on whether to issue an original license, and if so, what terms and conditions should become a part of any license issued.

In this EA, we assess the environmental and economic effects associated with the construction and operation of the project: (1) as proposed by Western; and (2) with staff's additional recommended measures. We also consider the effects of the no-action alternative. Important issues that are addressed include the potential for project effects on geology and soils, and aquatic, terrestrial, and cultural resources.

1.2.2 Need for Power

The proposed Angelo Dam Project would provide hydroelectric generation

to meet part of Wisconsin's power requirements, resource diversity, and capacity needs. The project would have an installed capacity of 205 kW and generate about 950 MWh per year.

The North American Electric Reliability Council (NERC) annually forecasts electrical supply and demand nationally and regionally for a 10-year period. The Angelo Dam Project is located in the Midwest Independent System Operator (MISO) sub region of the Midwest Reliability Organization (MRO) region of the NERC. According to NERC's 2011 forecast, average annual demand requirements for the MISO sub region are projected to grow at a rate of 2.9 percent from 2011 through 2021. MISO projects that resource capacity margins (generating capacity in excess of demand) will range between 15.2 percent and 23.2 percent of firm peak demand during the 10-year forecast period, including estimated new

capacity additions. Over the next 10 years, MRO estimates that about 4,894 megawatts (MW) of additional capacity will be brought on line.

We conclude that power from the Angelo Dam Project would help meet a need for power in the MISO sub-region in both the short and long-term. The project would provide low-cost power that displaces generation from non-renewable sources. Displacing the operation of non-renewable facilities may avoid some power plant emissions, thus creating an environmental benefit.

1.3 Statutory and Regulatory Requirements

A license for the proposed project is subject to numerous requirements under the Federal Power Act (FPA) and other applicable statutes. The major statutory and regulatory requirements are summarized in table 1 and described below.

TABLE 1—MAJOR STATUTORY AND REGULATORY REQUIREMENTS FOR THE ANGELO DAM PROJECT

Requirement	Agency	Status
Section 18 of the FPA—fishway prescriptions.	U.S. Department of Interior (Interior).	No prescriptions were filed.
Section 10(j) of the FPA .....	U.S. Fish and Wildlife Service (FWS). Wisconsin Department of Natural Resources (Wisconsin DNR).	No recommendations were filed.
Clean Water Act (CWA)—section 401 water quality certification (WQC).	Wisconsin DNR .....	Application for certification was received on January 24, 2011; action on application was due by January 24, 2012; Wisconsin DNR did not act on the request.
Endangered Species Act (ESA) .....	FWS .....	On August 18, 2009, Interior stated that no federally-listed threatened or endangered species, or critical habitat, are present in the immediate vicinity of the proposed project. In the EA, staff makes a "no effect" finding with regard to federally listed species; therefore, no ESA consultation with FWS is necessary.
Coastal Zone Management Act (CZMA).	Wisconsin Department of Intergovernmental Relations, Coastal Management Program Office (Wisconsin CMP).	On April 12, 2012, the Wisconsin CMP determined that no federal coastal consistency certification is required.
Section 106 of the National Historic Preservation Act (NHPA).	Wisconsin State Historic Preservation Officer (Wisconsin SHPO).	A programmatic agreement (PA) with the Wisconsin SHPO and Michigan State Historic Preservation Officer (Michigan SHPO) is in effect that encompasses all hydroelectric project licensing actions in Wisconsin and adjacent portions of Michigan.

1.3.1 Federal Power Act

1.3.1.1 Section 18 Fishway Prescriptions

Section 18 of the FPA, 16 U.S.C. 811, states that the Commission is to require construction, operation, and maintenance by a licensee of such fishways as may be prescribed by the Secretaries of Commerce or the Interior.

No fishway prescriptions, or requests for reservation of authority to prescribe fishways under section 18 of the FPA, have been filed.

1.3.1.2 Section 10(j) Recommendations

Under section 10(j) of the FPA, 16 U.S.C. 803(j), each hydroelectric license issued by the Commission must include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, or enhancement of fish and wildlife resources affected by the project. The Commission is required to include these conditions unless it determines that they are inconsistent with the purposes and requirements of the FPA or other applicable law. Before rejecting or modifying an agency recommendation, the Commission is

required to attempt to resolve any such inconsistency with the agency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency.

No federal or state fish and wildlife agency filed recommendations pursuant to section 10(j) of the FPA.

1.3.2 Clean Water Act

Under section 401(a) of the Clean Water Act (CWA), 33 U.S.C. 1341(a)(1) a license applicant must obtain certification from the appropriate state pollution control agency verifying compliance with the CWA. On January 20, 2011, Western applied to the

Wisconsin DNR for 401 WQC for the Angelo Dam Project. The Wisconsin DNR received this request on January 24, 2011. Because Wisconsin DNR has not acted on the request within one year from receipt of the request, the WQC is considered waived.

### 1.3.3 Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1536(a), requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat. There are no federally listed threatened and endangered species or designated critical habitat in the immediate project area that would be affected by the construction and operation of the proposed project. Therefore, the proposed project would have no effect on federally listed species.

### 1.3.4 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) of 1972, as amended, requires review of the project's consistency with a state's Coastal Management Program for projects within or that would affect the coastal zone. Under section 307(c)(3)(A) of the CZMA, 16 U.S.C. 1456(3)(A), the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state's coastal zone management agency concurs with the license applicant's certification of consistency with the state's Coastal Management Program, or the agency's concurrence is conclusively presumed by its failure to act within 180 days of its receipt of the applicant's certification.

The project is not located within the state-designated coastal management zone, and the project would not affect Wisconsin's coastal resources. Therefore, the project is not subject to Wisconsin's coastal zone program review and no consistency certification is needed for the action. By correspondence dated April 12, 2012 (filed on April 13, 2012), Wisconsin's Department of Intergovernmental Relations, Coastal Management Program Office, concurred with this determination.

### 1.3.5 National Historic Preservation Act

Section 106 of the NHPA, 16 U.S.C. 470, requires that every federal agency "take into account" how each of its undertakings could affect historic properties. Historic properties are districts, sites, buildings, structures,

traditional cultural properties, and objects significant in American history, architecture, engineering, and culture that are eligible for inclusion in the National Register of Historic Places (National Register).

To meet the requirements of section 106 of the NHPA, on December 16, 1993, Commission staff executed a Programmatic Agreement (PA) with the Wisconsin SHPO and Michigan SHPO. The PA contains principals and procedures for the protection of historic properties from the effects of the proposed construction and operation of hydroelectric projects in the state of Wisconsin and adjacent portions of the Upper Peninsula of Michigan. The terms of the PA ensure that Western addresses and treats all historic properties identified within the project's area of potential effects (APE) through implementation of the historic properties management plan (HPMP) entitled, *Cultural Resource Management Plan for the Proposed Licensing of the Angelo Dam Hydroelectric Facility in Angelo Township, Monroe County, Wisconsin, FERC Project 13417, Report of Investigations, No. 1865, June 2011* filed on October 21, 2011, and amended by letter filed on June 14, 2012.

## 1.4 Public Review and Consultation

The Commission's regulations, 18 CFR 4.38 and 16.8, require that applicants consult with appropriate resource agencies and other entities before filing an application for a license. This consultation is the first step in complying with the Fish and Wildlife Coordination Act, ESA, NHPA, and other federal statutes. Pre-filing consultation must be complete and documented according to the Commission's regulations.

### 1.4.1 Scoping

Due to the location of the proposed project, the minor nature of environmental effects, and the lack of response to our public notice regarding the project,<sup>1</sup> we waived formal scoping.

### 1.4.2 Interventions and Comments

On April 24, 2012, the Commission issued a notice accepting Western's license application and asking for motions to intervene and protests. The U.S. Department of the Interior (Interior) was the only entity that filed a written response to the notice. Interior filed a letter with the Commission on June 20, 2012, stating that it had no comments. No motions to intervene were filed.

<sup>1</sup> The Commission issued a notice on April 24, 2012, stating that it intended to waive scoping for this project.

## 2.0 Proposed Action and Alternatives

### 2.1 No-Action Alternative

The no-action alternative is license denial. Under the no-action alternative, the project would not be built, environmental resources in the project area would not be affected, and the renewable energy that would be produced by the project would not be developed.

## 2.2 Proposed Action

### 2.2.1 Project Facilities

The proposed hydropower project would generate electricity using the head created by the existing Angelo dam which is currently owned by Monroe County.

The Angelo dam is an earthen embankment with a maximum height of 14 feet and a spillway with a short non-overflow section. The dam has a total length of 615.5 feet. The spillway and a short non-overflow section are constructed of reinforced concrete and have a total length of 91.5 feet. The spillway is 72.42 feet long, 9.6 feet high from the foundation level to its crest, and contains four, 13.5-foot-wide by 11.4-foot-high bays each with 13.5-foot-wide by 6.9-foot-high steel tainter gates. The non-overflow section is 19.08 feet long, 20 feet high, and 19.7 feet wide and would be converted to serve as the project's intake after removing the concrete cap and plug that was poured in 1998 when the dam was rehabilitated.

In addition to the dam, the proposed project would consist of the following new elements: (1) A 22.84-foot-long by 16.08-foot-wide trashrack with 2-inch-clear bar spacing installed at the intake in the non-overflow section; (2) a 20-foot by 20-foot by 20-foot reinforced concrete box forebay; (3) a 26-foot-long by 24.5-foot-wide by 40-foot-high powerhouse located at the right abutment of the dam containing a 205-kW vertical, double-regulated Kaplan turbine; (4) a 30-foot-long, 480-volt overhead transmission line connecting the powerhouse generator to a step-up transformer that would be located on a pole which is part of Northern States Power's 2.7-kilovolt distribution line; and (5) appurtenant facilities. The estimated annual project generation is about 950 MWh.

The reservoir, referred to locally as Angelo Pond, has a surface area of 52 acres and a gross storage of 450 acre-feet at normal water elevation 793-feet mean sea level (msl). The project boundary, with a total area of 79.38 acres, includes

the pond up to elevation 795.0 msl,<sup>2</sup> the existing dam, the new forebay, powerhouse, and the 30-foot-long project transmission line. The applicant

and Monroe County Board have a signed agreement for the sale of the dam and transfer of the necessary water rights by Monroe County to the applicant. There

are no federal or tribal lands within the project boundary.

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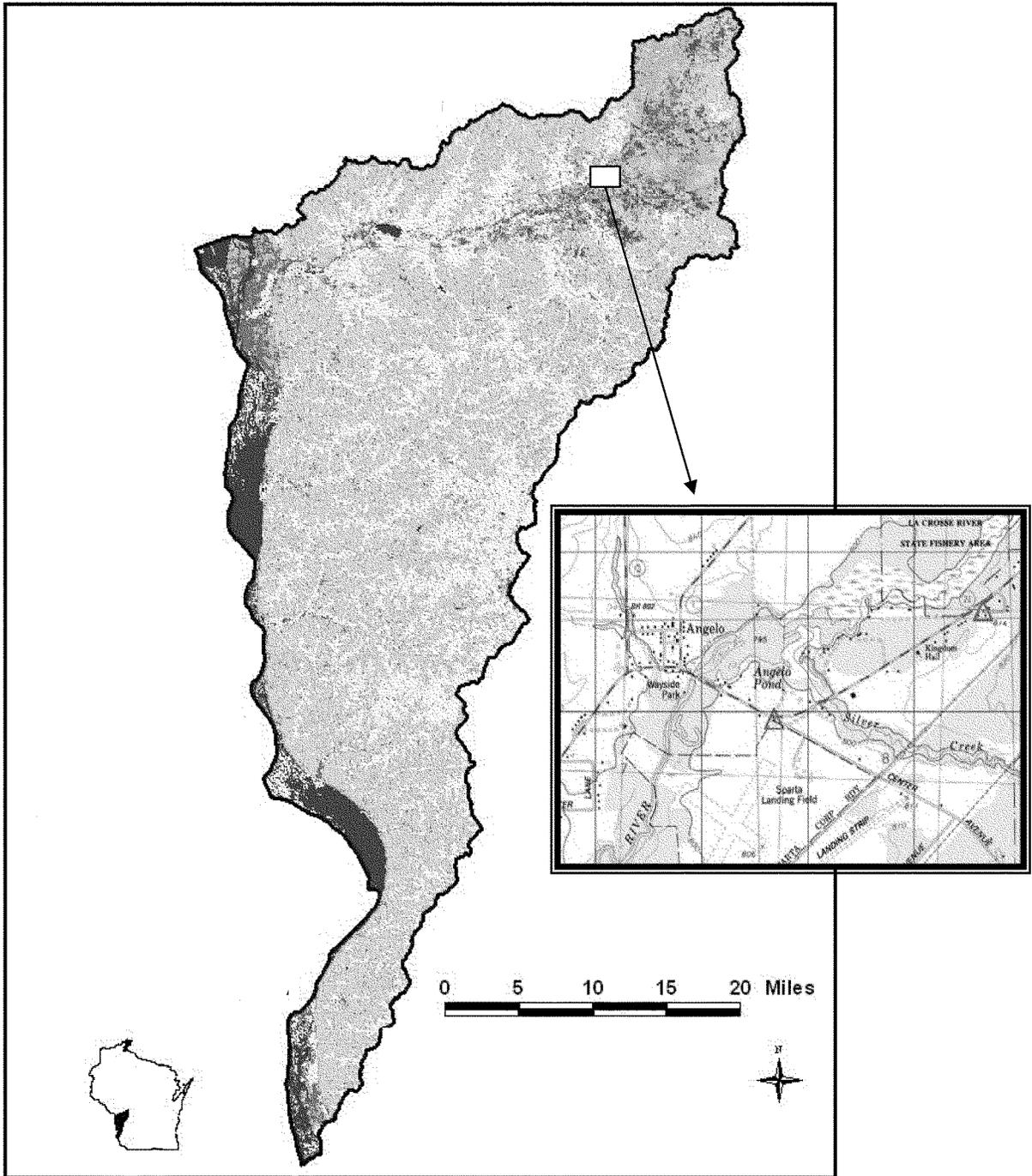


Figure 1. Map of Bad Axe – La Crosse River Basin, showing the location of the project. (Source: Wisconsin DNR, 2002a; as modified by staff)

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<sup>2</sup> See email communication record between staff and the applicant filed on July 19, 2012.

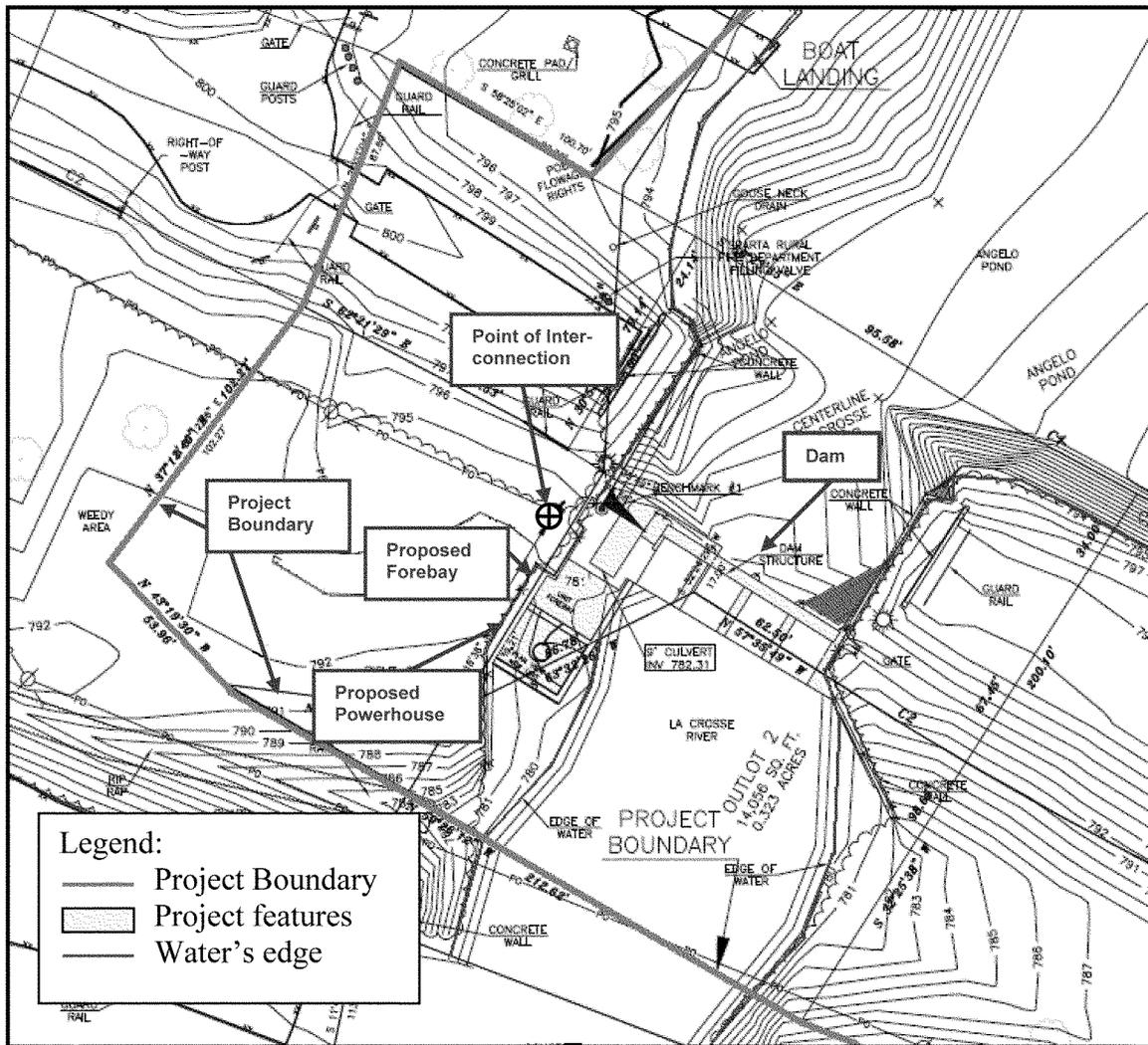


Figure 2. Project features for the Angelo Dam Project, FERC No. 13417-002 (Source: License application, as modified by staff).

### 2.2.2 Project Safety

As part of the licensing process, the Commission would prepare a Safety and Design Assessment covering the adequacy of the project facilities. Special articles would be included in any license issued, as appropriate. Operational inspections would focus on the continued safety of the structures, identification of unauthorized modifications, efficiency and safety operations, compliance with the terms of the license, and proper maintenance.

### 2.2.3 Project Operation

The dam and reservoir currently provide recreational benefits to the project area. There is currently no hydroelectric generation at the dam. The dam is operated manually in a run-of-river mode (i.e., an operating mode where outflows from the dam and

reservoir approximate inflows to the reservoir).

The proposed project would be operated in an automatic, run-of-river mode using the 17 feet of head created by the existing Angelo dam. The automatic mode would be achieved by use of a head pond elevation gage that would allow the project to operate within a foot from the maximum pond elevation of 793.6 msl. When the reservoir elevation exceeds 793.6 msl, the tainter gates would be opened to release flow under the gates to maintain a target pond elevation between 793.0 and 793.6 msl, the normal operating elevation range for the project.

The headpond has a maximum storage capacity of 450 acre-feet at elevation 793.0 msl (top of the tainter gates). The estimated plant hydraulic capacity is 168 cubic feet per second (cfs) at full load and 32 cfs at minimum load. The water used for project

generation would flow through the proposed trashracks and the new opening in the dam, continuing through an old penstock and the proposed forebay, into the powerhouse. The flow out of the powerhouse would discharge into the existing pool immediately downstream of the dam. Flows that exceed the project's maximum hydraulic capacity would be discharged over or under the dam spillway tainter gates. Currently, the spillway gates are opened manually, but the applicant would automate them to provide opening information as part of the proposed Supervisory Control and Data Acquisition (SCADA) system to be installed prior to project operation. SCADA would monitor and control the powerplant from a central location. The project would be run automatically with the help of water surface elevation controls. Maintenance staff would visit the facility regularly, as well as during

alarm conditions based on the automated call-in alarm to be built into the station control system.

#### 2.2.4 Environmental Measures

Western proposes to incorporate the following environmental measures into the design, operation, and maintenance of the proposed project:

- Developing and implementing an erosion and sediment control plan with provisions for using best management practices (BMP), including installing a temporary inflatable cofferdam, and placing hay bales and siltation fabric at locations where sediment-laden runoff could otherwise enter project waters or adjacent non-project lands;
- Operating the project in a run-of-the-river mode to minimize impacts on water quality and quantity, and fish and aquatic resources; and
- Implementing the PA, executed on December 16, 1993, and the HPMP, filed on October 21, 2011, and amended by letter filed on June 14, 2012.

Western also proposes to comply with all state water quality standards while operating the project. We consider this proposal to comply with state law to be a general legal matter, rather than a specific environmental measure.

#### 2.3 Staff Alternative

Under the staff alternative, the project would include Western's proposed environmental measures. Because Western's proposal to comply with state water quality laws is a general legal matter, we do not adopt it as an environmental measure under the staff alternative. We note, however, that below in section 3, we do assess the effects of proposed project construction

and operation on water quality, including the need for specific environmental measures to mitigate any adverse water quality effects. The staff alternative also includes a condition to implement an operation compliance monitoring plan, to verify proposed run-of-river operations at the project.

#### 3.0 Environmental Analysis

In this section, we present: (1) A general description of the project vicinity; (2) an explanation of the scope of our cumulative effects analysis; and (3) our analysis of Western's proposed actions and other recommended environmental measures. Sections are organized by resource area (e.g., aquatics, terrestrial, etc.). Under each resource area, historic conditions are first described. The existing condition is the baseline against which the environmental effects of Western's proposed actions and alternatives are compared, including an assessment of the effects of Western's proposed mitigation, protection, and enhancement measures, and any potential cumulative effects of Western's proposed actions and alternatives. Staff conclusions and recommended measures are discussed in section 5.2, *Comprehensive Development and Recommended Alternative* of the EA.<sup>3</sup>

#### 3.1 General Description of the River Basin

The Angelo Dam Project would be located on the La Crosse River, near

<sup>3</sup> Unless noted otherwise, the sources of our information are the license application (Western, 2011a) and additional information filed by Western (2012).

Angelo Township, in Monroe County, Wisconsin. The La Crosse River flows from north central Monroe County in a southwesterly direction for approximately 64 miles before reaching the Mississippi River. The La Crosse River exists entirely within the Bad Axe—La Crosse River Basin (basin), and the project area is located more specifically, in the Upper La Crosse River Watershed (watershed) where Silver Creek enters the La Crosse River (figures 3 and 4). The watershed has a drainage area of approximately 126 square miles, more than half of which is located in the Fort McCoy Military Reservation (Wisconsin DNR, 2002b).<sup>4</sup> The surrounding land area in this region is characterized by steep slopes, and narrow stream valleys.<sup>5</sup> Approximately 46 percent of the basin is forested, although agriculture is another major land use.

Several dams are located on the La Crosse River, including: (1) Hazel Dell dam, forming a 2-acre reservoir; (2) Alderwood dam, forming an 11-acre reservoir; (3) Angelo dam, the location of the proposed project, forming a 52-acre reservoir; (4) Perch Lake dam, forming a 33-acre reservoir; and (5) the Lake Neshonoc dam,<sup>6</sup> forming a 600-acre reservoir (Wisconsin DNR, 2002a).

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<sup>4</sup> Fort McCoy is used for military training and contains firing ranges, classrooms, and airborne drop zones.

<sup>5</sup> These characteristics are typical of the Driftless Area and Coulee Section ecoregions of Wisconsin (EPA, 2012).

<sup>6</sup> The Neshonoc dam and 600-acre reservoir are project facilities of the Neshonoc Water Power Project, FERC Project No. 6476.

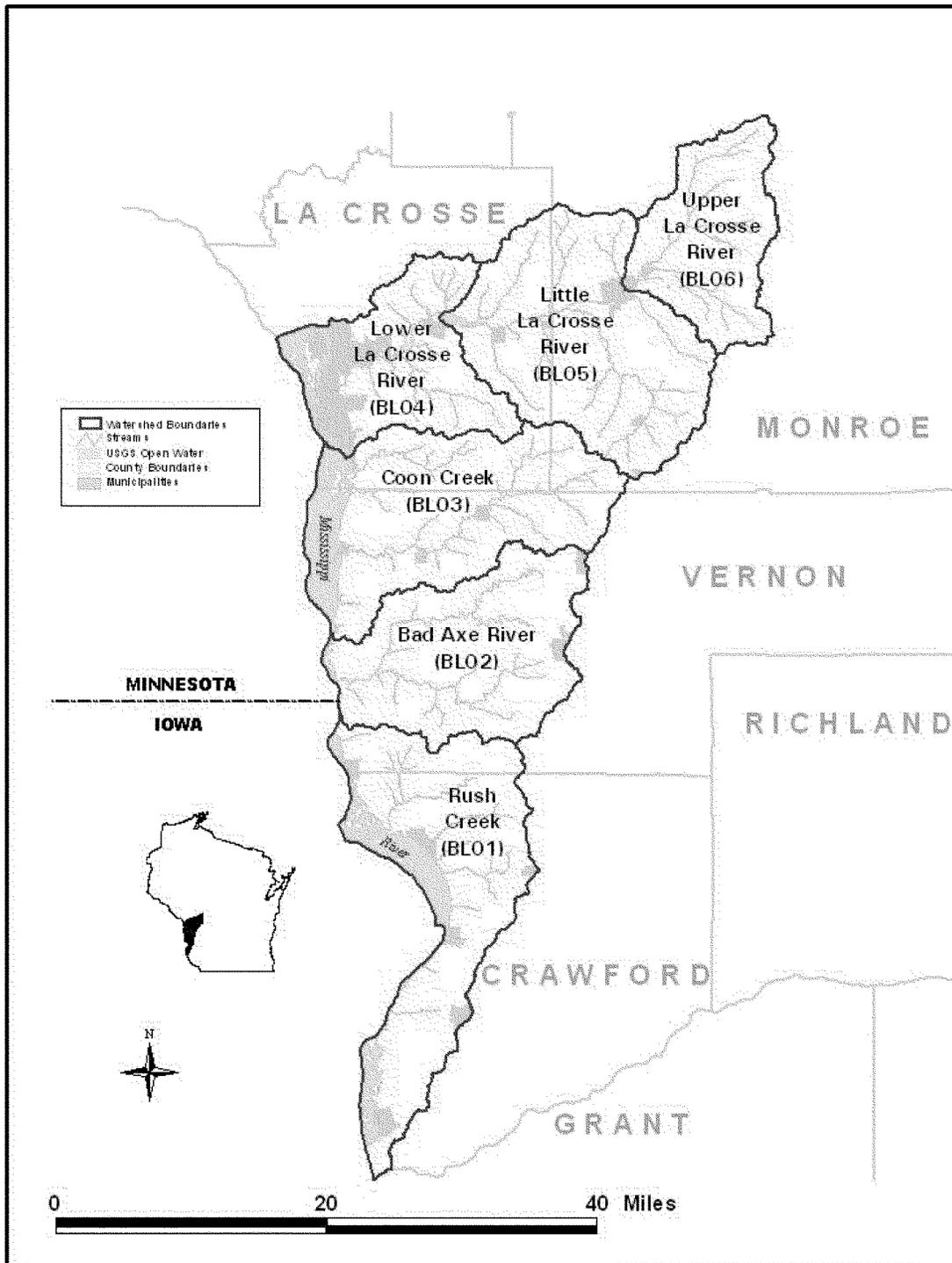


Figure 3. Map of the watersheds in the Bad Axe - La Crosse River Basin, divided by watershed boundaries (Source: Wisconsin DNR, 2002a; modified by Staff)

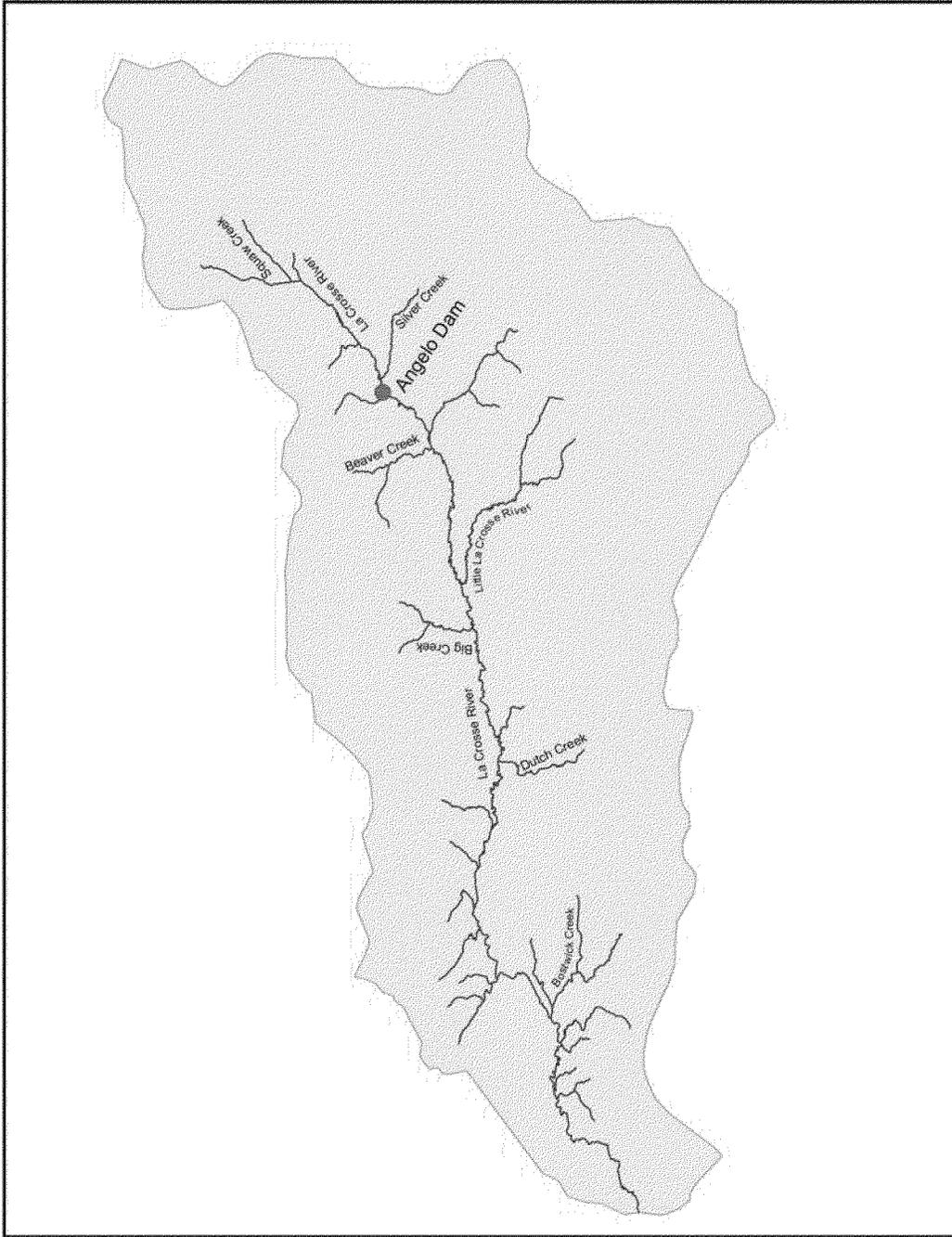


Figure 4. Map of the La Crosse River and tributaries within the Upper, Little, and Lower La Crosse River watersheds (Source: Staff).

**3.2 Scope of Cumulative Effects Analysis**

According to the Council on Environmental Quality’s regulations for implementing the National Environmental Policy Act (NEPA), 40 CFR 1508.7, a cumulative effect is the effect on the environment which results from adding the effects of a proposed action to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time, including hydropower and other land and water development activities.

Based on our review of the license application, no environmental resources would be cumulatively affected by licensing the Angelo Dam Project. The project is located in a rural area, with very little existing or planned future developmental activity. While several other dams, both with and without hydropower facilities, are located on the La Crosse River, the run-of-river operating regime proposed by Western would maintain reservoir levels and flows consistent with existing conditions. As such, operation of the project would not affect reservoirs either upstream or downstream of Angelo dam.

**3.3 Proposed Action and Action Alternatives**

In this section, we discuss the effects of the project alternatives on environmental resources. For each resource, we first describe the affected environment, which is the existing condition and baseline against which we measure effects. We then discuss and analyze the site-specific environmental issues.

Only the resources that would be affected are addressed in this EA. Based on this, we have determined that geology and soils, and aquatic, terrestrial, and cultural resources may be affected by the proposed action and action alternatives. We have not identified any substantive issues related to recreation, land use, aesthetics, or socioeconomic resources. We present our recommendations in section 5.1, *Comprehensive Development and Recommended Alternative*.

**3.3.1 Geology and Soils**

**Affected Environment**

The proposed project is located in an unglaciated region of Wisconsin characterized by an upper layer of limestone, eroded over time, followed

by a layer of Potsdam sandstone surface rock. The Potsdam sandstone layer of this western upland region is about 800 to 900 feet thick, and is Cambrian to Lower Silurian-aged. Below this layer is Archaean-age basement rock, namely highly metamorphic gneiss, granite, and schists. The basin is mostly composed of sand and clay deposits with a very shallow, gradual slope. Soils in the project area are poorly drained and level, classified as sands of the Dawson Peat and Newson sandy loam variety. These soil types are potentially erodible, although several areas along the river are protected by concrete retaining walls or rip rap.

**Environmental Effects**

Land-disturbing activities associated with construction of the proposed project primarily involve development of the powerhouse and forebay. The combined footprint of the powerhouse and forebay is approximately 740 square feet (20 feet by 37 feet), and would require about 135 cubic yards of excavation along the right (west) embankment. This area is usually dry and consists primarily of exposed bedrock with little to no soil. Western is not proposing to alter the slope or drainage patterns at the project.

To minimize the potential for erosion related to project construction, Western proposes to: (1) Develop and implement an erosion and sediment control plan; (2) install an inflatable cofferdam; and (3) use hay bales and siltation fabric. Western would use excavated material as riprap along the river embankments. Western also states that Wisconsin DNR and Monroe County’s shoreland zoning program both require approval of erosion control methods.

Heavy equipment would be limited to cranes sitting on the right embankment, and no access via the river bank is anticipated. The embankment in this area is also protected by a retaining wall. Less than 0.5 acre of land adjacent to the west side of the dam would be used as a staging area, as equipment and materials would generally be delivered on site from storage buildings on the Sparta Campus of the Technical College, which is located across the street from the construction area.

**Our Analysis**

Project construction would require some ground-disturbance, though most of this material would be rock, as opposed to soil. The area of disturbance is relatively small and the new powerhouse would occupy roughly the same footprint as the original one, which was removed in 1968. The staging area and heavy equipment use

would be located on lands that are paved, or covered with grass, reducing the likelihood of significant soil movement. Further, the control measures and BMPs proposed by Western would minimize any potential erosion and sedimentation.

Consultation with the Wisconsin DNR and Monroe County would further ensure that proper control measures are used, and any project effects would be mitigated. As the project would be operated run-of-river, and the reservoir elevation would vary by less than 1 foot, it is unlikely that the project’s operating regime would affect the occurrence of erosion or sedimentation over the course of any license issued.

**3.3.2. Aquatic Resources**

**Affected Environment**

**Water Quantity and Quality**

The headwaters of the La Crosse River originate in Monroe County northeast of the proposed project near the Fort McCoy Military Reservation. The La Crosse River flows in a southwesterly direction for about 64 miles through Monroe and La Crosse counties before reaching the Mississippi River. Five dams on the La Crosse River create Lake Neshonoc in West Salem, Perch Lake in Sparta, Angelo Pond in the Town of Angelo, and Alderwood Lake and Hazel Dell Pond both of which lie within the Fort McCoy Military Reservation. The Angelo dam is located approximately 5 miles south of Fort McCoy’s main post entrance. The drainage area of the dam site is about 115 square miles.

The Angelo dam forms a 52-acre reservoir known locally as Angelo Pond. Table 2 details the specific physical characteristics of Angelo Pond.

**TABLE 2—ANGELO POND SPECIFICATIONS**

Pond surface area	52 acres
Maximum volume .....	450 acre-ft.
Maximum depth .....	8 ft.
Mean depth .....	4 ft.
Flushing rate .....	121 hours.
Shoreline length .....	2.62 miles.
Composition .....	Gravel, sand, and mud.

Downstream of the Angelo dam, the La Crosse River flows south 2.5 miles to the city of Sparta, Wisconsin where the USGS gauge station #05382325 is located. The period of record for gauge 05382325 is from July 1992 to present. Table 3 shows the mean monthly discharge rate (cfs) for the La Crosse River for the period of record. The La Crosse River has a continuous, steady discharge flow of 100–200 cfs

throughout the year, with the highest flows occurring in June and the lowest flows occurring in January.

TABLE 3—MEAN MONTHLY DISCHARGE RATES AT USGS GAUGE 05382325 FROM 1992–2011

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Mean Monthly Discharge (cfs) .....	131	142	171	185	178	205	166	150	151	152	149	138

The La Crosse River in the area of the proposed project is relatively shallow. Figure 5 depicts the La Crosse River

depth at gauge 05382325, located 2.5 miles downstream of the Angelo dam.

River depths increase during periods of high discharge (April–June).

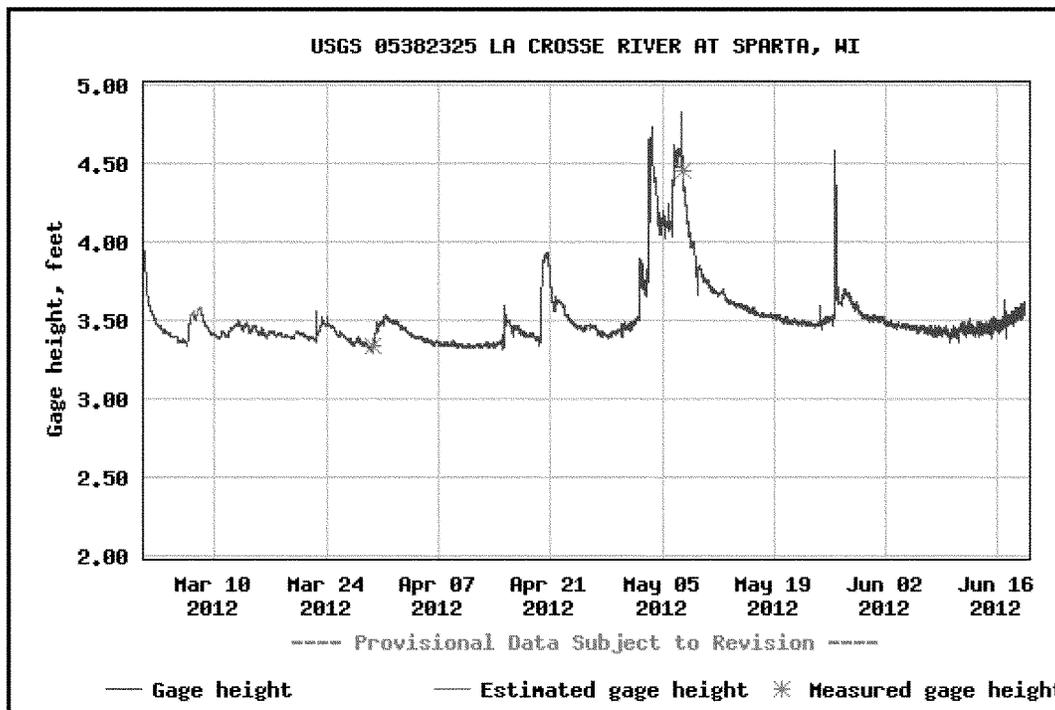


Figure 5. Spring and summer water depth of the La Crosse River at USGS Gauge 05382325.

The Wisconsin DNR has determined the La Crosse River at the Angelo dam to be a “Fish and Aquatic Life Use of a Cold Water Community”. The Wisconsin DNR further breaks down cold water communities, and recognizes the La Crosse River as a “Coldwater Category 5.” This coldwater category includes inland trout waters with brook and brown trout, but no whitefish,

cisco, or other trout or salmonid species. The water classification and standards for Wisconsin water quality parameters are as follows:<sup>7</sup> (1) Dissolved oxygen (DO) in classified trout streams shall not be artificially lowered to less than 6.0 milligrams per liter (mg/L) at any time, nor shall the DO be lowered to less than 7.0 mg/L during the spawning season; (2) pH shall be within a range of 6.0 to

9.0; and (3) water temperature may not exceed 86 degrees Fahrenheit (°F) while maintaining natural daily and seasonal temperature fluctuations. Additional water temperature criteria are shown in Table 4. The primary use of water in Angelo Pond and around the Angelo dam is for recreation.

TABLE 4—AMBIENT TEMPERATURES AND WATER QUALITY CRITERIA FOR COLD WATER COMMUNITIES

Month	Ambient temperature (°F)	Sub-lethal water quality criteria	Acute water quality criteria (°F)
January .....	35	47	68
February .....	36	47	68

<sup>7</sup> All water quality criteria for Wisconsin are contained in four Administrative Code chapters, NR 102, 103, 104, and 105.

TABLE 4—AMBIENT TEMPERATURES AND WATER QUALITY CRITERIA FOR COLD WATER COMMUNITIES—Continued

Month	Ambient temperature (°F)	Sub-lethal water quality criteria	Acute water quality criteria (°F)
March .....	39	51	69
April .....	47	57	70
May .....	56	63	72
June .....	62	67	72
July .....	64	67	73
August .....	63	65	73
September .....	57	60	72
October .....	49	53	70
November .....	41	48	69
December .....	37	47	69

### Fishery Resources

The existing fish and aquatic communities include coldwater, freshwater fish such as brook and rainbow trout throughout the La Crosse River. Trout are present in Angelo Pond; however, no anadromous species inhabit the La Crosse River or Angelo Pond. Due to the size and shallow depth of Angelo Pond, it is seasonally a warm-water surface source, with warm-water fish species present during those times. Angelo Pond has regularly been stocked with largemouth bass and rainbow trout since 1984, and is listed as an impaired waterway on the Wisconsin Impaired Water List.

Based on the Wisconsin DNR Trout Stream Classification, the La Crosse River upstream of Angelo Pond is a Class II trout stream. A Class II trout stream is categorized as having some natural reproduction, but not enough to utilize available food and space. Therefore, stocking is required to maintain a desirable sport fishery. These streams have good survival and carryover of adult trout, often producing some fish larger than average size. Angelo Pond is upstream 5 miles from Perch Lake, and both surface water bodies are connected by the La Crosse River. The segment of the La Crosse River between Angelo Pond and Perch Lake is classified as a Class III trout stream. Class III trout streams are categorized by waters with marginal trout habitat, and no natural reproduction. Annual stocking of trout is required to provide for trout fishing, and there is generally no carryover of trout from one year to the next.

According to the Wisconsin DNR, Angelo Pond impounds the La Crosse River where Silver Creek enters the river. Both streams traverse Fort McCoy Military Installation, for a significant amount of their length. The La Crosse River contains a sand bottom, which is slowly filling Angelo Pond. This reservoir also slows the river's current down enough to allow fine sediment to

settle out. These fine sediments in Angelo Pond maintain a robust aquatic plant community.

### Environmental Effects

#### Water Quality

Western proposes to operate the proposed project in a run-of-river mode to minimize the impacts on water quality and quantity, and fish and aquatic resources. Western also proposes to operate the project to ensure discharges from the project meet state water quality standards during project operation, construction, and maintenance.

#### Our Analysis

DO, water temperature, and pH, 2.5 miles downstream of the proposed project, are at levels in the La Crosse River that are currently consistent with the levels specified by Wisconsin state water quality standards.<sup>8</sup> USGS data shows that DO concentrations were measured six times from May 2002–October 2002, and ranged from 8.9–11.9 mg/L. During the fall, when brown and brook trout typically spawn, DO concentrations never fell below 8.9 mg/L, which is well above the state water quality standard minimum concentration of 7.0 mg/L. The pH was also measured six times during the same time period with values ranging from 7.2–7.7. Temperature measurements were taken 29 times between July 1992 and October 2002. The temperatures ranged from 32.9 degrees Fahrenheit (°F) to 72.4 °F. November through March typically experienced the coldest water temperatures, with January 12, 1994 being the coldest day measured. June through August typically experienced the warmest water temperatures with July 17, 2002 being the warmest day measured. Of the 29

measured observations, none exceeded the state water quality standards.

The proposed project design and operation would not interfere with the flow of water downstream of the Angelo dam since the proposed project will operate run-of-river. Water will continue to be discharged at the foot of the dam or flow either over or under the existing tainter gates. The run-of-river operations proposed by Western should ensure that project operation would not change current DO, water temperature, or pH levels in the La Crosse River.

However, with the construction activities at the Angelo dam there is a potential to temporarily increase river turbidity, which would reduce water quality relative to existing conditions. Implementing a short-term erosion and sediment control plan that incorporates, at a minimum, the BMPs discussed in section 3.3.1, *Geology and Soils* should ensure that any degradation of water quality would be temporary and minimal.

#### Operation Compliance Monitoring

Operation compliance monitoring is a standard requirement in all Commission-issued licenses. Development and implementation of an operation compliance monitoring plan and schedule would be beneficial in this instance in that it would document the procedures Western Technical College would employ to demonstrate compliance with its proposed project operations.

#### Entrainment and Impingement

Water intake structures at hydropower projects can injure or kill fish that are entrained through turbines. Typically, fish injury or mortality is caused by fish being struck by turbine blades, or being exposed to pressure changes, sheer forces in turbulent flows, and water velocity accelerations (Knapp et al., 1982). Fish vulnerability to entrainment relates to powerhouse and spillway operations, fish sizes, movement patterns, swimming speeds, approach

<sup>8</sup> USGS Gauge 05382325 La Crosse River at Sparta, WI, water quality samples from July 29, 1992–October 15, 2002.

velocities, trashrack bar spacing, and intake configurations. The survival rate of fish passing through turbines varies for different sizes of fish and for turbines with different design characteristics. For example, Winchell et al. (2000) reports mean survival rate

of fish less than 8 inches was 94.8 percent and 95.4 percent for fish less than 4 inches. Aside from fish size (with larger fish being more susceptible to injury), species type (some fish species are hardier than others and some species are more susceptible to

entrainment), and behavior (migratory species are more likely to be entrained) along with the fish's burst swim speed could also influence percentages of fish subjected to potential injury or mortality from turbine entrainment.

TABLE 5—FISH SWIM SPEED INFORMATION FOR FISH SPECIES IN THE PROJECT AREA

[Source: Normandeau Associates, Inc., 2002]

Species	Life stage	Size (inches)	Burst swim speed (feet/sec or fps)
Largemouth bass	Juvenile	2–4	3.2
Largemouth bass	Juvenile	5.9–10.6	4.3
Crappie	Juvenile	3	1–2

TABLE 6—SUSTAINED AND BURST SWIMMING SPEEDS OF BROOK AND BROWN TROUT

[Sources: Bell, 1986 and Montana Water Center, 2007]

Species	Life stage	Sustained swimming speed (fps)	Prolonged swimming speed (fps)	Burst swimming speed (fps)
Brook Trout	Juvenile	Not documented	2.0	Not documented
Brown Trout	Adult	7.0–7.8	Not documented	12.2–12.8

Tables 5 and 6 show typical sustained, prolonged, and burst swim speeds for fish species commonly found in the project area. Most juvenile and adult game fish burst speeds exceed the average approach velocity of 0.5 feet per second (fps) that would occur in front of the project's intake, suggesting that most life stages of most reservoir species would be able to escape from velocities near, and at, the intake face and thereby avoid entrainment.

For smaller reservoir fish that would pass through the intake, we expect turbine mortality to be relatively minor. We note that at Wisconsin hydroelectric projects where entrainment studies have

been conducted, small fish (less than 4 inches long) accounted for 79 percent of fish entrained during the field studies (Electric Power Research Institute, or EPRI, 1997). Due to their small size, the vast majority of small fish from the study survived turbine passage into downstream aquatic habitats. The survival of these smaller fish was relatively high, because they were less prone to mechanical injury from turbine passage than larger fish. Smaller fish also are less prone to injury resulting from shear stresses and rapid pressure changes. Therefore, it is likely that the majority of the entrained fish would be composed of the poorest swimmers (i.e.,

very small fish), and most of these fish would survive turbine passage.

In addition to entrainment effects, fish can become impinged on the bars of a trashrack if they are not able to overcome the approach velocity and are not able to pass between the trashrack bars due to their larger body size. Lawler et. al. (1991) developed an equation to determine minimum fish length protected by a trashrack or screen. The equation is  $TL=10^{\text{caret}}[\log(w/\alpha)/\beta]$ , where TL is total length, w is trashrack spacing, and alpha and beta are standard values.

TABLE 7—MINIMUM FISH LENGTH PROTECTED BY 1-INCH TRASHRACK SPACING

Species	Trashrack spacing (w)	alpha (α)	beta(β)	Total length (TL)
Black crappie	2.0	0.059347	1.166856	20.3
Brown trout	2.0	0.129648	1.000168	15.4
Rainbow trout	2.0	0.028369	1.287580	27.2
Trout-perch	2.0	0.032855	1.388542	19.2
White sucker	2.0	0.055538	1.187414	20.4
Yellow perch	2.0	0.034100	1.307944	22.4

Based on the results of the studies conducted by Lawler et. al (1991), we calculate that the trashrack's 2-inch spacing between the trashrack's bars would generally not allow passage of brown trout greater than 15.4 inches total length, black crappie greater than 20.3 inches total length, and yellow perch greater than 22.4 inches total length. The average velocity in front of

the trashrack would be approximately 0.5 fps. Brown trout larger than 15.4 inches, black crappie larger than 20.3 inches, yellow perch larger than 22.4 inches are in the adult life stage. Table 5 shows that a juvenile black crappie is capable of a burst swim speed 1–2 fps. Table 6 shows that an adult brown trout is capable of a sustained swimming speed of 7.0–7.8 fps with a burst swim

speed of 12.2–12.8 fps. Since burst speeds are typically short in duration (1–3 seconds), a brown trout could burst ahead of the trashrack's influence and swim at a sustained speed safely in front of the trashrack. Therefore, impingement at the project would not be likely as most of the fish that are large enough to be subject to impingement, such as adult brown

trout, yellow perch, and black crappie, would easily be able to escape the intake's approach velocity.

To summarize, we conclude that the overall effect on the fishery due to entrainment and turbine mortality would be minimal. We also conclude that impingement of fish on the project's trashrack would be unlikely.

### 3.3.3. Terrestrial Resources

#### Affected Environment

The Bad Axe-La Crosse Basin is characterized by steep slopes and narrow river valleys, which is a distinctive attribute of the Coulee ecoregion. Much of the land in the basin is used for agriculture, particularly for beef and dairy farms. Outside of agricultural lands, vegetation in the basin consists of oak forest and savanna, grassland prairie, and bottom hardwoods (Wisconsin DNR, 2002a). Most of the forests in the basin are oak-hickory (56 percent), followed by elm-ash-cottonwood (16 percent), maple-ash-basswood (16 percent), aspen-birch (8 percent), and pine (4 percent). This habitat supports a wide variety of wildlife species including wild turkey, Cooper's hawk, ovenbird, blue jay, brown snake, bull snake, gray tree frog, white-tailed deer, gray squirrel, and gray fox. Avian species known to occur within the project site include: several species of songbirds, waterfowl (e.g., geese, herons, and ducks), birds of prey (i.e. hawks and owls), and other common species (e.g., crows and black birds).

Wetlands in the basin account for approximately 2 percent of the total land area, with about 4,000 acres in the Upper La Crosse River watershed. While no wetlands appear to be present adjacent to the dam or project facilities, palustrine scrub-shrub and palustrine forested wetlands are located in the vicinity of the project (1) to the north and east of the upper half of the reservoir, as well as (2) downstream of the dam. Some freshwater emergent (marsh) habitat is also located near the northeastern section of Angelo Pond. Upland vegetation in the immediate vicinity of the proposed project includes mostly grasses, sedges, and shrubs. As several residential homes are located around the reservoir, some of the shoreline areas near and around Angelo Pond are maintained as lawns.

Several species of invasive plants are known to occur in Monroe County, including Canada thistle, garlic mustard, Japanese knotweed, common reed, and purple loosestrife, to name a few. The only species known to occur in Angelo Pond according to the

Wisconsin DNR, is curly-leaf pondweed (*Potamogeton crispus*), though the specific location and density of the population is unclear. Curly-leaf pondweed becomes invasive in some areas due to its tolerance for low light and low water temperatures, which allows for the species to grow and bloom earlier in the season and outcompete native plants in the spring. As the species begin to die off mid-summer, it can contribute to a critical loss of DO and increase nutrients to encourage algal blooms. Curly-leaf pondweed also forms surface mats that interfere with aquatic recreation (Wisconsin DNR, 2012a).

Staff review of the FWS (2012a) endangered species list found that the following threatened and endangered (T&E) species are known to occur in Monroe County: the Karner blue butterfly (*Lycaeides melissa samuelis* or *Karner's*) and northern wild monkshood (*Aconitum noveboracense*). The Karner blue butterfly is an endangered species found in the northern part of wild lupine's range, and is most widespread in Wisconsin. Habitat loss for the Karner's is the result of land development, and lack of natural disturbances (i.e. wildfires and large mammal grazing) to discourage encroaching forests. In May of 2009, the Environmental Protection Agency (EPA) issued a bulletin for the Karner's, noting that use of an insecticide called Intrepid (methoxyfenozide) could cause potential and actual harm to the species. As such, Western noted that it would not use Intrepid, for any reason, either during or after construction.

Northern monkshood is a threatened species found only in Iowa, Wisconsin, Ohio, and New York. Northern monkshood is often found on shaded to partially shaded cliffs, algific talus slopes,<sup>9</sup> or along cool streambanks, as it prefers cool soil, cold air drainage, and/or cold groundwater flowage. In a letter filed with the Commission on August 18, 2009, Interior stated that no threatened or endangered species exist in the project area.

#### Environment Effects

As discussed in section 3.3.1, *Geology and Soils*, the total area of disturbance is 875 square feet, including 135 square feet for excavation for the draft tube and 740 square feet for the powerhouse and forebay, which would only require surface cleaning and concrete bonding. The project would generate electricity using a 205-kW, 480-volt generator. The main power leads would leave the

<sup>9</sup> Algific talus slopes are also called "cold air slopes."

powerhouse overhead and connect to an existing distribution line less than 30 feet away. No land-disturbing activities are associated with the transmission line.

Access to the project works would be from the existing cul-de-sac near the west side of the dam and created during the realignment of the old Highway 21. The cul-de-sac is approximately 130 feet west of the project works. Limited staging of equipment during project construction would occur on 0.5 acre of land, with most of the necessary equipment stored off-site.

While some grassy areas may be temporarily disturbed and soils slightly compacted by the movement of equipment and personnel during the construction of the proposed project, no long-term adverse effects to terrestrial resources are anticipated. The construction area would be relatively small, and would occur over an area that has been previously disturbed, due to changes in land use over time (e.g., sawmill, installation and subsequent removal of the former powerhouse). The dam is located in an area with a fair amount of development, including Highway 21, the Sparta Campus of Western Technical College, some residential development, and the Fort McCoy Military Reservation. As such, the project site is lacking in high quality habitat for wildlife. While there may be some noise associated with the ground-disturbing activities that could temporarily deter some species, any impacts would be minor and short-term.

While curly-leaf pondweed was found in Angelo Pond in 2006, all ground-disturbing activities are happening in the dry, away from the impoundment. Further, the water levels in the reservoir will not change and as such project operations would likely have no effect on any existing pondweed populations. The wetlands in the vicinity of the project are also located well outside of the construction zone and would not be otherwise affected by project operation due to the proposed run-of-river operating regime.

Karner's rely primarily on the presence of wild lupine (*Lupinus perennis*), a perennial wildflower that prefers sandy areas in open or partially shaded landscapes. In Wisconsin, this habitat is typically dry, sandy openings, including openings in oak savannas, jack pine stands, and dune or sandplain communities. Other areas with wild lupine may include utility, or road rights-of-way, abandoned agricultural fields, and military training areas and bombing ranges (FWS, 2012b), as wild lupine responds well to occasional ground-disturbance. While these species

are known to occur in Monroe County, it is unlikely that either species are present in the area of disturbance. Although the soils in the proposed area of disturbance include sands and sandy loams, the soils are poorly drained, and therefore, unsuitable for wild lupine. In addition, most of the construction area is bedrock, with little to no soil.

The algific talus slopes required by northern monkshood are rare communities with steep, fractured limestone slopes that retain ice throughout the growing season. These slopes support mountain maple (*Acer spicatum*), extensive beds of bulbet fern (*Cystopteris bulbifera*) and mosses (Wisconsin DNR, 2012b). The project area is not located on an algific talus slope, which are more common further west toward the Mississippi River, and in Grant County Wisconsin. The project area is relatively level, and, where vegetation exists, is mainly composed of grasses.

To summarize, because there are no Karners, northern monkshood, nor habitat for either species within the project area, project construction and operation would have no effect on these species.

### 3.3.4. Cultural Resources

#### Affected Environment

##### Area of Potential Effects

Under section 106 of the NHPA, the Commission must take into account whether any historic property within the project's APE could be affected by the issuance of a license. The APE is defined as the geographic area in which an undertaking may directly or indirectly cause alterations in the character or use of a historic property, if any such property exists. In this case, the APE for the project is the proposed project boundary.

#### Regional History

The earliest evidence of Native American occupation in Wisconsin dates to the Paleo-Indian period (10,000–8500 B.C.). Occupation continued through the Archaic (8,000–1,000 B.C.), Woodland (1000–300 B.C.), and Mississippian periods (A.D. 900–1600). Upon European contact, much of Wisconsin, including the project area, was occupied by the Ho-Chunk. Beginning in 1840, there were a series of forcible relocations throughout the state, which resulted in the Ho-Chunk being moved to lands west of the Mississippi River. The forcible relocations continued until 1875, at which time a majority of the remaining Ho-Chunk were relocated to Monroe and Jackson counties, Wisconsin.

European settlement in Monroe County occurred in 1842. Between 1852 and 1854, Dr. Seth Angle built a dam and sawmill at the site of the current Angelo dam. The sawmill prospered, and the village of Athens was settled around the mill and dam in 1856. The village's name was later changed to Angelo. By the 1900's, the population of Angelo had declined because of the high price of land and because the railroad did not travel by the town.

In 1897, the sawmill was converted into the Sparta Electric Plant. The Wisconsin-Minnesota Light and Power Company purchased the plant, and in 1920, rebuilt the dam. In 1947, Northern States Power Company bought the facility, and in 1968 refurbished the dam and demolished the powerhouse. In 1969, Northern States Power Company ceased operation of the facility. In 1998, the refurbished dam was demolished, and Angelo dam was constructed in its place (Salkin, 2011).

#### Archaeological and Historic Resources

A phase I survey of the APE, conducted in 2010, revealed no surface or sub-surface archaeological resources, Euro-American artifacts, or buildings or structures that would be eligible for the National Register. The existing Angelo dam is not eligible for the National Register, because it is less than 50 years old.

A portion of the APE to be surveyed was inaccessible during the initial survey; therefore, a second phase I survey was conducted in March and April of 2012. No surface or sub-surface archaeological resources were discovered during the second survey. In total, the two surveys covered about 87 percent of the APE. The Wisconsin SHPO, in letters filed on October 21, 2011, and June 14, 2012, concurred with the two surveys' findings.

#### Environmental Effects

Proposed project construction and operation may affect unknown historic properties within the APE. The executed PA requires that every proposed hydroelectric project in Wisconsin develop an HPMP to avoid, lessen, or mitigate for any adverse effects on both identified and unidentified historic properties within the APE. To address any potential adverse effects on unidentified historic properties,<sup>10</sup> Western proposes to implement its HPMP, filed on October 21, 2011 and amended by letter filed on June 14, 2012. The HPMP contains policies and procedures for: (1) The

completion of a phase I survey of the unsurveyed areas within the APE; (2) treatment of unanticipated archaeological resource discoveries or human remains; (3) the determination of the National Register-eligibility of any discovered archaeological resource; (4) the treatment of any unknown historic property over the term of any license issued; and (5) the appointment of an HPMP coordinator. In letters filed on October 21, 2011 and June 14, 2012, the Wisconsin SHPO accepted the proposed HPMP with its amendments.<sup>11</sup>

#### Our Analysis

Western conducted two cultural resource surveys, but was unable to survey about 17 percent of the land within the project's APE. In these unsurveyed areas, project operations could adversely affect unknown archaeological resources that could be eligible for the National Register. Also during project construction or operation, unknown archaeological sites or human remains may be discovered. The proposed HPMP contains protocols and procedures to adequately address any unanticipated discoveries during future surveys or proposed project construction and operation. Also the proposed HPMP contains provisions to lessen, avoid, or mitigate for any adverse effects if the discovered properties are eligible for the National Register or if human remains are discovered.

We anticipate that any effects on unknown historic properties would be taken into account through the executed PA and the proposed HPMP. The documents would ensure that any adverse effects on historic properties within the APE would be resolved.

### 3.4 No-Action Alternative

Under the no action alternative, a license for the project would not be issued and the Angelo Dam Project would not be constructed. There would be no changes to the physical, biological, or cultural resources in the area, and there would be no hydroelectric generation at the dam to contribute to the regional need for power.

### 4.0 Developmental Analysis

In this section, we look at Western's use of the La Crosse River for hydropower purposes to see what effects various environmental measures would have on the projects' costs and

<sup>11</sup> Pursuant to section II.B., *Historic Resources Management Plan*, of the executed PA, if the Wisconsin SHPO agrees with the HPMP, then Western shall implement the HPMP, if a license is issued.

<sup>10</sup> There are no known historic properties within the APE.

power generation. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,<sup>12</sup> the Commission compares the current project cost to an estimate of the cost of obtaining the same amount of energy and capacity using a likely alternative source of power for the region (cost of alternative power). In keeping with Commission policy as described in *Mead Corp.*, our economic analysis is based on current electric power cost conditions and does not consider future escalation of fuel prices in valuing the hydropower project's power benefits.

For each of the licensing alternatives, our analysis includes an estimate of: (1) The cost of individual measures considered in the EA for the protection, mitigation and enhancement of environmental resources affected by the project; (2) the cost of alternative power; (3) the total project cost (i.e., for construction, operation, maintenance, and environmental measures); and (4) the difference between the cost of alternative power and total project cost. If the difference between the cost of alternative power and total project cost is positive, the project produces power for less than the cost of alternative power. If the difference between the cost of alternative power and total project cost is negative, the project produces power for more than the cost of alternative power. This estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

However, project economics is only one of many public interest factors the Commission considers in determining whether, and under what conditions, to issue a license.

**4.1 Power and Economic Benefits of the Project**

Table 8 summarizes the assumptions and economic information we use in our analysis. This information was provided by Western in its license application and subsequent submittal. We find that the values provided by Western are reasonable for the purposes of our analysis. Cost items common to all alternatives include: Taxes and insurance costs; estimated capital investment required to develop the project; licensing costs; normal operation and maintenance cost; and Commission fees.

TABLE 8—PARAMETERS FOR THE ECONOMIC ANALYSIS OF THE ANGELO DAM PROJECT

[Source: Staff]

Parameter	Value
Period of analysis (years) .....	30.
Term of financing (years) .....	20. <sup>a</sup>
Taxes (real estate, local, federal).	\$0. <sup>b</sup>
Project cost .....	\$1,376,000.
Licensing cost, \$ .....	\$50,000.
Operation and maintenance, \$/year.	\$10,000.
Energy value (\$/MWh) .....	\$90.
Capacity value (\$/MW-year) .....	\$159,000.
Interest rate .....	10 percent. <sup>c</sup>

TABLE 8—PARAMETERS FOR THE ECONOMIC ANALYSIS OF THE ANGELO DAM PROJECT—Continued

[Source: Staff]

Parameter	Value
Discount rate .....	10 percent. <sup>c</sup>

<sup>a</sup> Western was awarded \$1,200,000 in public funding. Staff assumes that the remainder of the cost to develop the project would be financed.

<sup>b</sup> Western is a state entity, and therefore, does not pay taxes.

<sup>c</sup> See license application at 7.

The Angelo Dam Project would have an installed capacity of 205 kW and would generate an average of 948.5 MWh annually. Table 8 includes an energy value of \$90/MWh which is the price at which Western would sell the project power to Northern States Power as agreed in a Power Purchase Agreement between the two entities.<sup>13</sup> The capacity value of \$159,000/MW-year (table 8) is based on the amortization and fixed operation and maintenance cost for a simple-cycle combustion turbine.

**4.2 Comparison of Alternatives**

Table 9 summarizes the installed capacity, annual generation, cost of alternative power, estimated total project cost, and difference between the cost of alternative power and total project cost for each of the alternatives considered in this EA: no-action, the applicant's proposal, and the staff alternative.

TABLE 9—SUMMARY OF THE ANNUAL COST OF ALTERNATIVE POWER AND ANNUAL PROJECT COST FOR THREE ALTERNATIVES FOR THE ANGELO DAM PROJECT

[Source: Staff]

	No action	Western's proposal	Staff alternative
Installed capacity (kW) .....	0	205	205
Annual generation MWh) .....	0	948.5	948.5
Dependable Capacity (kW) .....	0	205 <sup>a</sup>	205
Annual cost of alternative power (\$/MWh) .....	0	124.86	124.86
Annual project cost (\$/MWh) .....	0	38.35	38.65
Difference between the cost of alternative power and project cost (\$/MWh) .....	0	86.20	80.71

<sup>a</sup> See license application at 23.

**4.2.1 No-Action Alternative**

Under the no-action alternative, the Angelo Dam Project would not be constructed and there would be no hydropower generation, costs, or benefits at this site.

**4.2.2 Applicant's Proposal**

Western proposes to construct a new hydropower facility at the existing Angelo dam. Upon completion of the construction, the proposed project would have a total installed capacity of 205 kW, a dependable capacity of 205 kW, and an average annual generation of

948.5 MWh. Additionally, Western proposes to implement the executed PA and an associated HPMP at a capital cost of \$27,000 and an annual cost of \$1,500, which is included in the total project cost of \$1,376,000. In addition, Western proposes to develop and implement an erosion and sediment

<sup>12</sup> See *Mead Corporation, Publishing Paper Division*, 72 FERC ¶ 61,027 (July 13, 1995). In most cases, electricity from hydropower would displace

some form of fossil-fueled generation, in which fuel cost is the largest component of the cost of electricity production.

<sup>13</sup> See license application at 9.

control plan, use BMPs, and operate the project in run-of-river mode. The costs of these measures are included in the total project costs. The average annual cost of alternative power would be \$118,432, or \$124.86/MWh. The capital cost of the project including protection, mitigation, and enhancement measures is estimated to be \$1,376,000. In total, the average annual project cost would be \$36,371, or \$38.65/MWh. Overall, the project as proposed would produce power at a cost which is \$81,589, or \$86.20 MWh less than the cost of alternative power.

4.2.3 Staff Alternative

The staff alternative includes the same developmental and environmental measures as Western’s proposal and, therefore, would have the same capacity and energy attributes. In addition to applicant’s environmental measures, staff recommends that Western develop and implement an operation compliance monitoring plan and schedule, for

Angelo dam at a cost of \$2,500 in capital expenditure.

Based on a total installed capacity of 205 kW, a dependable capacity of 205 kW, and an average annual generation of 948.5 MWh, the cost of alternative power would be \$118,432, or about \$124.86/MWh. The average annual project cost would be \$36,663, or about \$38.65/MWh. Overall, the project would produce power at a cost which is \$81,297, or \$85.471/MWh, less than the cost of alternative generation.

4.3 Cost of Environmental Measures

Western is proposing to implement the executed PA and associated HPMP at a capital cost of \$27,000 and an annual cost of \$1,500 which is included in the total project cost of \$1,376,000. The costs associated with Western’s proposal to develop and implement an erosion and sediment control plan, use BMPs, and operate the project in run-of-river mode, as stated above, are included in the total project costs. Staff is recommending that an operation compliance monitoring plan and

schedule be developed at a capital cost of \$2,500, to ensure compliance with the proposed run-of-river operating regime. We convert all costs to equal annual (levelized) values over a 30-year period of analysis to give a uniform basis for comparing the benefits of a measure to its cost. Staff’s recommended operation compliance monitoring plan would add about \$292 to the project cost, annually.

5.0 Conclusions and Recommendations

5.1 Comparison of Alternatives

In this section, we compare the developmental and non-developmental effects of Western’s proposal, Western’s proposal as modified by staff, and the no-action alternative.

We estimate the annual generation of the project under the three alternatives identified above. Our analysis shows that the annual generation would be 948.5 MWh for the proposed action, 948.5 MWh for the staff alternative, and 0 MWh for the no-action alternative.

TABLE 10—COMPARISON OF EFFECTS FOR EACH ALTERNATIVE ASSOCIATED WITH THE ANGELO DAM PROJECT

[Source: Staff]

Resource	No action alternative	Proposed action	Staff recommended alternative
Generation .....	No hydroelectric generation .....	948.5 MWh of electricity produced annually.	948.5 MWh of electricity produced annually.
Geologic and Soils Resources .....	No changes to geology or soils at or near the proposed project site.	Western would excavate approximately 135 cubic yards of bedrock to construct the proposed powerhouse and forebay. To ensure the protection of project resources from sedimentation and erosion, Western would develop, and implement (BMPs) during project construction as well as develop and implement an erosion and sediment control plan. There would, nonetheless, be the potential for temporary and minor erosion and sedimentation at the site.	Same as proposed action.
Aquatic Resources .....	No changes to current water quality conditions where DO, water temperature, and pH are at levels consistent with state water quality standards.	There would be temporary, minor increases in turbidity associated with construction. Run-of-river operation would maintain current water quality.	Same as proposed action.
Terrestrial .....	No changes to existing terrestrial resources.	Project construction would cause minor, short-term disturbance of grassy areas, compaction of soils, and generation of noise associated with excavation activities.	Same as proposed action.
Cultural Resources .....	No changes to the current conditions where there are no known historic properties. There would be no potential for unknown historic properties to be affected by the project.	Construction and operation of the proposed project could adversely affect unknown historic properties. Western proposes to implement the HPMP filed on October 21, 2011, and amended by letter filed on June 14, 2012, to mitigate for any adverse effects on newly discovered historic properties.	Same as proposed action.

## 5.2 Comprehensive Development and Recommended Alternative

Sections 4(e) and 10(a) of the FPA require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing waterway or waterways for all beneficial public uses. This section contains the basis for, and a summary of, our recommendations for licensing the Angelo Dam Project. We weigh the costs and benefits of our recommended alternative against other proposed measures.

Based on our independent review of the environmental and economic effects of the proposed project and its alternatives, we selected Western's proposal with staff's modifications as the preferred alternative. We recommend this alternative because: (1) Issuance of an original hydropower license by the Commission would allow the applicant to construct and operate the project as an economically beneficial and dependable source of electrical energy; (2) the 205 kW of electric capacity would come from a renewable resource which does not contribute to atmospheric pollution; (3) the public benefits of this alternative would exceed those of the no-action alternative; and (4) the recommended measures would protect, mitigate, and enhance environmental resources affected by building, operating, and maintaining the project.

### 5.2.1. Measures Proposed by Western

Based on our environmental analysis of Western's proposal in section 3, and the costs presented in section 4, we conclude that the following environmental measures proposed by Western would protect and enhance environmental resources and would be worth the cost. Therefore, we recommend including these measures in any license issued for the project:

- Developing and implementing an erosion and sediment control plan with provisions for using BMPs, including installing a temporary inflatable cofferdam, and placing hay bales and siltation fabric at locations where sediment-laden runoff could otherwise enter project waters or adjacent non-project lands;

- Operating the project in a run-of-the-river mode to minimize impacts on water quality and quantity, and fish and aquatic resources; and
- Implementing the PA, executed on December 16, 1993, and the HPMP, filed on October 21, 2011, and amended by letter filed on June 14, 2012.

### 5.2.2. Additional Measures Recommended By Staff

In addition to Western's proposed measures noted above, we recommend that Western develop and implement an operation compliance monitoring plan and schedule to monitor compliance with run-of-river operations. In section 3.3.2, *Aquatic Resources*, we determined that such a plan would ensure that Western would be able to demonstrate compliance with its proposed run-of-river operating regime. In section 4, staff concluded that developing and implementing an operation compliance monitoring plan would have an annualized cost of \$292. The benefits of the plan justify the annualized cost of \$292.

As noted in section 2.2.4, Western also proposes to comply with all state water quality standards while operating the project. We consider this proposal to comply with state law to be a general legal matter rather than a specific environmental measure, and therefore, do not adopt it as an environmental measure under the staff alternative. Nevertheless, in section 3, we analyzed the effects of proposed project construction and operation on water quality in the La Crosse River and concluded that with the exception of the potential for short-term, minor increases in turbidity during construction, Western's proposal to operate the project in a run-of-river mode would ensure that there would be no long-term adverse effects on water quality.

### 5.3 Unavoidable Adverse Effects

As discussed in section 3.3.1, *Geology and Soils Resources*, 135 cubic yards of rock would be permanently excavated. Also, any potential erosion or sedimentation that would occur during project construction would be minimized through the development and implementation of an erosion and sediment control plan.

As discussed in section 3.3.2, *Aquatic Resources*, construction activities may cause minor, short-term adverse effects on water turbidity, but developing and implementing an erosion and sediment control plan would limit the severity and scope of these effects. The operation of the proposed project would also result in some entrainment and mortality of resident fish. However,

these effects would likely be minor as most large fish would be able to escape the intake's approach velocity, and the majority of small fish are more likely to survive passage through the project turbine. Therefore, any adverse effects would be minimal and are unlikely to negatively impact the project reservoir's (Angelo Pond's) fish community as a whole.

### 5.4 Fish and Wildlife Agency Recommendations

Under section 10(j) of the FPA, 16 USC 803(j), each hydroelectric license issued by the Commission must include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, or enhancement of fish and wildlife resources affected by the project.

No federal or state fish and wildlife agency filed recommendations pursuant to section 10(j) of the FPA.

### 5.5 Consistency With Comprehensive Plans

Section 10(a)(2) of the FPA, 16 USC 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by a project. We reviewed three plans that are applicable to the project and found no inconsistencies.<sup>14</sup>

### 6.0 Finding of No Significant Impact

On the basis of our independent analysis, the issuance of an original license for the Angelo Dam Project, as proposed, would not constitute a major federal action significantly affecting the quality of the human environment.

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### 8.0 List of Preparers

- Janet Hutzel—Cultural Resources (Outdoor Recreation Planner; B.S., Environmental Analysis and Planning; M.S., Geography)
- Isis Johnson—Project Coordinator, Geology and Soils, Terrestrial Resources, (Environmental Biologist; M.S. Sustainable Development and Conservation Biology, B.S Wildlife Conservation and Entomology)
- Bryan Roden-Reynolds—Aquatic Resources (Fisheries Biologist; B.S., Wildlife and Fisheries Science)
- Sergiu Serban—Need for Power and Developmental Analysis (Civil Engineer; B.S. and M.S., Civil Engineering)

[FR Doc. 2012–21176 Filed 8–27–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP12–484–000]

#### East Tennessee Natural Gas, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Wacker Polysilicon Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Wacker Polysilicon Project involving construction and operation of facilities proposed by East Tennessee Natural Gas, LLC (ETNG) in Bradley and Maury Counties, Tennessee. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on September 20, 2012. You may submit comments in written form. Further details on how to submit written comments are in the

Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

ETNG provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?”. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)).

#### Summary of the Proposed Project

ETNG proposes to construct 2,800 feet of 8-inch-diameter natural gas pipeline that would extend from a new metering facility located on ETNG's existing 12-inch-diameter pipeline (3200–1) to a proposed new receiver station on the Wacker Polysilicon Plant property in Bradley County, Tennessee. The new pipeline would supply 5,700 Dekatherms per day (Dth/d) of natural gas to the Wacker Polysilicon facility which is currently being built under Tennessee Valley Authority (TVA) land use and 26A approval (TVA 2008–74). Also, in order to provide additional pressure and flow capacity in Line 3200–1, ETNG would install piping modifications and a pressure limiting device (relief valve) on Line 3200–1 in Maury County, Tennessee. The general location of the project facilities are shown in Appendix 1.<sup>1</sup>

<sup>1</sup> The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at [www.ferc.gov](http://www.ferc.gov) using the link called “eLibrary” or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202)

### Land Requirements for Construction

Construction of the Project pipeline would permanently affect a total of 1.86 acres of land in Bradley County for operation and maintenance of the proposed lateral pipeline and 0.61 acres combined in Bradley and Maury Counties for operation and maintenance of the proposed above ground facilities. ETNG would construct a total of 0.85 miles of two new access roads for construction and operation of project facilities and for access to the Wacker Polysilicon Plant.

### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us<sup>2</sup> to discover and address concerns the public may have about proposals. This process is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
  - Land use;
  - Water resources, fisheries, and wetlands;
  - Cultural resources;
  - Vegetation and wildlife;
  - Air quality and noise;
  - Endangered and threatened species;
- and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments

502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

<sup>2</sup> “We,” “us,” and “our” refer to the environmental staff of the Commission’s Office of Energy Projects.

on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.<sup>3</sup> Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

### Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation’s implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project’s potential effects on historic properties.<sup>4</sup> We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

### Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so

<sup>3</sup> The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

<sup>4</sup> The Advisory Council on Historic Preservation’s regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

that the Commission receives them in Washington, DC on or before September 20, 2012.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP12-484-000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502-8258 or [efiling@ferc.gov](mailto:efiling@ferc.gov).

(1) You can file your comments electronically using the *eComment* feature on the Commission’s Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to *Documents and Filings*. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission’s Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to *Documents and Filings*. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on “*eRegister*.” You must select the type of filing you are making. If you are filing a comment on a particular project, please select “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

### Environmental Mailing List

The environmental mailing list includes: federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission’s regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive

a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

### Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an “intervenor” which is an official party to the Commission’s proceeding. Intervenor’s play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission’s final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are available on the Commission’s Web site at <http://www.ferc.gov/help/how-to/intervene.asp>.

### Additional Information

Additional information about the project is available from the Commission’s Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at [www.ferc.gov](http://www.ferc.gov) using the “eLibrary” link. Click on the eLibrary link, click on “General Search” and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP12–484). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to [www.ferc.gov/esubscribenow.htm](http://www.ferc.gov/esubscribenow.htm).

Finally, public meetings or site visits will be posted on the Commission’s calendar located at [www.ferc.gov/EventCalendar/EventsList.aspx](http://www.ferc.gov/EventCalendar/EventsList.aspx) along with other related information.

Dated: August 21, 2012.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2012–21088 Filed 8–27–12; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER12–2496–000]

#### Emera Energy Services Subsidiary No. 10 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Emera Energy Services Subsidiary No. 10 LLC’s application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant’s request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 10, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission’s eLibrary system by clicking on the appropriate link in the above list. They are also 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](mailto:FercOnlineSupport@ferc.gov), or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 21, 2012.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2012–21078 Filed 8–27–12; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER12–2484–000]

#### LVI Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of LVI Power, LLC’s application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant’s request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 10, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 21, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012-21083 Filed 8-27-12; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER12-2493-000]

#### **Emera Energy Services Subsidiary No. 7 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding, of Emera Energy Services Subsidiary No. 7 LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 10, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 21, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012-21085 Filed 8-27-12; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER12-2447-001]

#### **Brookfield Smoky Mountain Hydropower LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding, of Brookfield Smoky Mountain Hydropower LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 6, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 17, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012-21135 Filed 8-27-12; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER12-2217-003]

#### **Power Dave Fund LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding, of Power Dave Fund LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 5, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 16, 2012.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2012-21127 Filed 8-27-12; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER12-2495-000]

#### **Emera Energy Services Subsidiary No. 9 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding, of Emera Energy Services Subsidiary No. 9 LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and § 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 10, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 21, 2012.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2012-21087 Filed 8-27-12; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER12-2494-000]

#### **Emera Energy Services Subsidiary No. 8 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding, of Emera Energy Services Subsidiary No. 8 LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and § 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 10, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission,

888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 21, 2012.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2012-21086 Filed 8-27-12; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER12-2492-000]

#### **Emera Energy Services Subsidiary No. 6 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding, of Emera Energy Services Subsidiary No. 6 LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is September 10, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://>

[www.ferc.gov](http://www.ferc.gov). To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 21, 2012.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2012-21084 Filed 8-27-12; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. OR12-26-000]

#### **Kinder Morgan Pony Express Pipeline LLC; Belle Fourche Pipeline Company; Notice of Petition for Declaratory Order**

Take notice that on August 17, 2012, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2012), Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Company, filed a petition seeking a declaratory order approving certain specified rate structures, services and prorationing terms, as more fully described in their petition.

Any person desiring to intervene or to protest in this proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern time on Friday, September 14, 2012.

Dated: August 21, 2012.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2012-21080 Filed 8-27-12; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. OR12-25-000]

#### **Oxy Midstream Strategic Development, LLC, Magellan Midstream Partners, L.P.; Notice of Petition for Declaratory Order**

Take notice that on August 13, 2012, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2012), Oxy Midstream Strategic Development, LLC and Magellan Midstream Partners, L.P., on behalf of BridgeTex Pipeline Company, LLC, filed a petition seeking a declaratory order approving the

proposed tariff and rate structure for a new interstate pipeline project that will transport crude oil from the Permian Basin, which is sourced in West Texas and New Mexico, to the Houston, Texas Gulf Coast area.

Any person desiring to intervene or to protest in this proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern time on Tuesday, September 4, 2012.

Dated: August 22, 2012.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2012-21175 Filed 8-27-12; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 14436-000]

#### Kaweah River Power Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 17, 2012, Kaweah River Power Authority, California, 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 Terminus Project Incremental Generation Project to be located on the Kaweah River/Lake Kaweah near the town of Lemon Cove, Tulare County, Nevada. The project would affect federal lands and facilities administered by the U.S. Army Corps of Engineers (Corps). 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 utilize the existing facilities under the Kaweah River Power Authority's licensed Terminus Power Project No. 3947 that include: (1) The 2,375-foot-long, 250-foot-high, earthfill, Corps, Terminus dam; (2) a 1,675-foot-long penstock; (3) a powerhouse containing one generating unit with a rated capacity of 20.09 megawatts (MW); (4) a 25-foot-long tailrace; (5) and a 2-mile-long, 66-kilovolt transmission line interconnecting the Terminus Project to an existing Southern California Edison Company transmission line.

The proposed project would consist of the three additional units: Unit 2, Unit 3 and Unit 4. The proposed Unit 2 would include: (1) A 6-MW Francis turbine; (2) a 470-foot-long, 6-foot-diameter steel penstock connecting to the existing Unit 1 penstock; and (3) a 50-foot-long by 40-foot-wide by 49-foot-tall concrete powerhouse. The proposed Unit 3 would include: (1) A 2-MW Francis turbine; and (2) a 3.5-foot-diameter low-flow conduit branching off from the existing Unit 1 penstock. The proposed Unit 4 would include a 1-MW Francis turbine and would be connected by an extension to the proposed 3.5-foot-diameter low-flow conduit. Unit 3 and Unit 4 would share a concrete powerhouse. The annual energy output of all three proposed units (9 MW)

would be approximately 9.2 gigawatthours.

*Applicant Contact:* Gene Kilgore, Kaweah River Power Authority, 2975 North Farmersville Blvd., Farmersville, CA 93223; phone (559) 747-5604.

*FERC Contact:* Brian Csernak; phone: (202) 502-6144.

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](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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-14436) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 22, 2012.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2012-21178 Filed 8-27-12; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RM98-1-000]

**Records Governing Off-the-Record Communications**

**Public Notice**

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file

associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the

decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Docket No.	Communication date	Presenter or requester
Prohibited:		
1. CP11-161-000 .....	8-3-12	Jolie DeFeis. <sup>1</sup>
2. CP11-161-000 .....	8-4-12	Jolie DeFeis. <sup>2</sup>
Exempt:		
1. CP11-161-000 .....	8-21-12	Pike County Commissioners.

<sup>1</sup> Email record.  
<sup>2</sup> Email record.

Dated: August 21, 2012.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2012-21077 Filed 8-27-12; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Notice of Commission Staff Attendance**

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting related to Seams Issues between MISO and PJM:

*2012 PJM/MISO Joint and Common Market Initiative—Seams Issues Meeting*

**August 24, 2012, 10 a.m.–3 p.m., Local Time**

The above-referenced meeting will be held at:

The Philadelphia Airport Marriot, Philadelphia, PA.

The above-referenced meeting is open to stakeholders.

Further information may be found at: <http://www.pjm.com/committees-and-groups/stakeholder-meetings/stakeholder-groups/pjm-miso-joint-common.aspx>.

The discussions at the meeting described above may address matters at issue in the following proceeding:

Docket No. RM10-23-000/001, *Order No. 1000*.

For more information, contact Jesse Hensley, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502-6228 or [Jesse.Hensley@ferc.gov](mailto:Jesse.Hensley@ferc.gov).

Dated: August 21, 2012.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2012-21079 Filed 8-27-12; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. AD12-12-000]

**Coordination Between Natural Gas and Electricity Markets; Supplemental Notice for Mid-Atlantic Region Technical Conference**

As announced in the Notices issued on July 5, 2012<sup>1</sup> and July 17, 2012,<sup>2</sup> the Federal Energy Regulatory Commission (Commission) staff will hold a technical conference on Thursday, August 30, 2012, from 9 a.m. to approximately 5:30 p.m. local time to discuss gas-electric coordination issues in the Mid-Atlantic

<sup>1</sup> Coordination between Natural Gas and Electricity Markets, Docket No. AD12-12-000 (July 5, 2012) (Notice Of Technical Conferences) (<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13023450>); 77 FR 41184 (July 12, 2012) (<http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16997.pdf>).

<sup>2</sup> Coordination between Natural Gas and Electricity Markets, Docket No. AD12-12-000 (July 17, 2012) (Supplemental Notice Of Technical Conferences) (<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13029403>).

region.<sup>3</sup> The agenda and list of roundtable participants for this conference are attached. This conference is free of charge and open to the public. Commission members may participate in the conference.

The Mid-Atlantic region technical conference will be held at the following venue: Commission Headquarters, 888 First Street NE., Washington, DC 20426.

If you have not already done so, those who plan to attend the Mid-Atlantic region technical conference are strongly encouraged to complete the registration form located at: [www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-form.asp](http://www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-form.asp). There is no deadline to register to attend the conference. The dress code for the conference will be business casual.

The Mid-Atlantic region technical conference will not be transcribed. However, there will be a free webcast of the conference. The webcast will allow persons to listen to the Mid-Atlantic region technical conference, but not participate. Anyone with Internet access who desires to listen to the Mid-Atlantic region conference can do so by navigating to [www.ferc.gov](http://www.ferc.gov)'s Calendar of Events and locating the Mid-Atlantic region technical conference in the Calendar. The Mid-Atlantic region technical conference will contain a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit [www.CapitolConnection.org](http://www.CapitolConnection.org) or call 703-993-3100.<sup>4</sup>

Information on this and the other regional technical conferences will also be posted on the Web site [www.ferc.gov/industries/electric/indus-act/electric-coord.asp](http://www.ferc.gov/industries/electric/indus-act/electric-coord.asp), as well as the Calendar of Events on the Commission's Web site [www.ferc.gov](http://www.ferc.gov). Changes to the agenda or list of roundtable participants for the Mid-Atlantic region technical conference, if any, will be posted on the Web site [www.ferc.gov/industries/electric/indus-act/electric-coord.asp](http://www.ferc.gov/industries/electric/indus-act/electric-coord.asp) prior to the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice)

<sup>3</sup> As indicated in the July 5, 2012 notice, for purposes of this technical conference, the Mid-Atlantic region includes New York Independent System Operator Inc., PJM Interconnection, L.L.C. and related areas.

<sup>4</sup> The webcast will continue to be available on the Calendar of Events on the Commission's Web site [www.ferc.gov](http://www.ferc.gov) for three months after the conference.

or 202-208-1659 (TTY), or send a Fax to 202-208-2106 with the required accommodations.

For more information about this and the other regional technical conferences, please contact:

Pamela Silberstein, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8938,

[Pamela.Silberstein@ferc.gov](mailto:Pamela.Silberstein@ferc.gov).

Robert Snow, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-6716, [Robert.Snow@ferc.gov](mailto:Robert.Snow@ferc.gov).

Sarah McKinley, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8004,

[Sarah.McKinley@ferc.gov](mailto:Sarah.McKinley@ferc.gov).

Dated: August 22, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012-21177 Filed 8-27-12; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9722-4]

### Proposed CERCLA Administrative Settlement Agreement and Order on Consent for the Mercury Refining Superfund Site, Towns of Guilderland and Colonie, Albany County, NY

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region 2, of a proposed de minimis administrative settlement agreement and order on consent pursuant to Section 122(g)(4) of CERCLA, between EPA and American Axle & Manufacturing, Inc., Amersham Health, Inc., Bishop & Associates, City of San Diego, County Board of Arlington, Virginia, Energy Solutions Services, Inc., Scientific Ecology Group, Inc., Genesys Regional Medical Center, Ingot Metal Company, Ltd., Purina Mills, LLC, Shred-A-Can Recyclers, Ltd., Triumvirate Environmental, Inc., and Waste Management of Michigan, Inc. (hereafter "Settling Parties") pertaining to the Mercury Refining Superfund Site ("Site") located in the Towns of Guilderland and Colonie, Albany

County, New York. The settlement requires specified individual payments by each Settling Party to the EPA Hazardous Substance Superfund Mercury Refining Superfund Site Special Account, which combined total \$79,028.49. Each Settling Party's individual settlement amount is considered to be that party's fair share of cleanup costs incurred and anticipated to be incurred in the future, plus a "premium" that accounts for, among other things, uncertainties associated with the costs of that future work at the Site. The settlement includes a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, relating to the Site, subject to limited reservations, and protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate.

EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007-1866.

**DATES:** Comments must be submitted on or before September 27, 2012.

**ADDRESSES:** The proposed settlement is available for public inspection at EPA Region 2 offices at 290 Broadway, New York, New York 10007-1866. Comments should be sent to the individual identified below and should reference the Mercury Refining Superfund Site, Index No. CERCLA-02-2011-2012. To request a copy of the proposed settlement agreement, please contact the individual identified below.

**FOR FURTHER INFORMATION CONTACT:** Sharon E. Kivowitz, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007-1866. Telephone: 212-637-3183. Email: [kivowitz.sharon@epa.gov](mailto:kivowitz.sharon@epa.gov).

Dated: August 21, 2012.

**Walter Mugdan,**

*Director, Emergency and Remedial Response Division, EPA, Region 2.*

[FR Doc. 2012-21216 Filed 8-27-12; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9721-4]

**Availability of FY 11 Grantee Performance Evaluation Reports for the Eight States of EPA Region 4 and 17 Local Agencies****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of availability; Clean Air Act Section 105 grantee performance evaluation reports.

**SUMMARY:** EPA's grant regulations require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of eight state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Georgia Department of Natural Resources; Commonwealth of Kentucky Energy and Environment Cabinet; Mississippi Department of Environmental Quality; North Carolina Department of Environment and Natural Resources; South Carolina Department of Health and Environmental Control; and Tennessee Department of Environment and Conservation) and 17 local programs (City of Huntsville Division of Natural Resources, AL; Jefferson County Department of Health, AL; Broward County Environmental Protection and Growth Management Department, FL; City of Jacksonville Environmental Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Miami-Dade County Air Quality Management Division, FL; Orange County Environmental Protection Division, FL; Palm Beach County Health Department, FL; Pinellas County Parks and Conservation Resources, FL; Louisville Metro Air Pollution Control District, KY; Forsyth County Environmental Affairs Department, NC; Mecklenburg County Land Use and Environmental Services Agency, NC; Western North Carolina Regional Air Quality Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Shelby County Health Department, TN; Knox County Department of Air Quality Management, TN; and Metropolitan Government of Nashville and Davidson County Public Health Department, TN). The 25 evaluations were conducted to assess the agencies' Fiscal Year 2011 performance under the grants awarded by EPA under authority of section 105

of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection.

**ADDRESSES:** The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street SW., Atlanta, Georgia 30303, in the Air, Pesticides and Toxics Management Division. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marie Persinger (404) 562-9048 for information concerning the state and local agencies of Alabama and Kentucky; Artra Cooper (404) 562-9047 for the state and local agencies of Florida; Mary Echols (404) 562-9053 for the state agency of Georgia; Shantel Shelmon (404) 562-9817 for the state and local agencies of North Carolina; Angela Isom (404) 562-9092 for the state agencies of Mississippi and South Carolina; and Gwendolyn Graf (404) 562-9289 for the state and local agencies of Tennessee. They may be contacted at the Region 4 address mentioned in the previous section of this notice.

Dated: August 14, 2012.

**Stanley Meiburg,**

*Deputy Regional Administrator, Region 4.*

[FR Doc. 2012-21202 Filed 8-27-12; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9721-2]

**Notification of a Joint Public Teleconference of the Chartered Science Advisory Board and Board of Scientific Counselors****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a joint public teleconference of the Chartered SAB and Board of Scientific Counselors (BOSC) to discuss a draft report providing advice on implementation of Office of Research and Development's (ORD's) strategic directions for research.

**DATES:** The public teleconference will be held on September 19, 2012 from 12 p.m. to 3 p.m. (Eastern Daylight Time).

**ADDRESSES:** The public teleconference will be conducted by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing to obtain general information regarding the

quality review teleconference should contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voice mail (202) 564-2218; fax (202) 565-2098 or via email at [nugent.angela@epa.gov](mailto:nugent.angela@epa.gov). General information concerning the EPA Science Advisory Board can be found on the SAB Web site at <http://www.epa.gov/sab>.

**SUPPLEMENTARY INFORMATION:** The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The BOSC was established by the EPA to provide advice, information, and recommendations regarding the ORD research program. The SAB and BOSC are Federal Advisory Committees chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB and BOSC will hold a joint public teleconference to discuss a draft report providing advice on implementation of ORD's new strategic directions for research. The SAB and BOSC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

*Background:* ORD has restructured its research programs to better understand environmental problems and inform sustainable solutions to meet EPA's strategic goals. The restructured research programs comprise six program areas: Air, Climate, and Energy; Safe and Sustainable Water Resources; Sustainable and Healthy Communities; Chemical Safety for Sustainability; Human Health Risk Assessment; and Homeland Security.

ORD requested that the SAB work jointly with the BOSC to provide advice on implementation of ORD's strategic research action plans; efforts to strengthen program integration; and efforts to strengthen and measure innovation. The SAB and BOSC held a joint public meeting on July 10-11, 2012, to discuss implementation of ORD's six major research programs (77 FR 36273-36274). The SAB and BOSC will hold a public teleconference on September 19, 2012, to discuss their draft joint advisory report. Additional information about SAB and BOSC advice on implementing ORD strategic research directions can be found on the SAB Web site at <http://www.epa.gov/sab>.

[yosemite.epa.gov/sab/sabproduct.nsf/fedgrstr\\_activites/Impl%20ORD%20Strat%20Dir?OpenDocument](http://yosemite.epa.gov/sab/sabproduct.nsf/fedgrstr_activites/Impl%20ORD%20Strat%20Dir?OpenDocument).

**Availability of Meeting Materials:** The agenda and other materials in support of the teleconference will be placed on the SAB Web site at <http://www.epa.gov/sab> in advance of the teleconference.

**Procedures for Providing Public Input:** Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments pertaining to the group providing advice, EPA's charge questions and EPA review or background documents. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO for the relevant advisory committee directly.

**Oral Statements:** In general, individuals or groups requesting time to make an oral presentation at a public SAB teleconference will be limited to three minutes. Those interested in being placed on the public speakers list for the September 19, 2012 teleconference should contact Dr. Nugent at the contact information provided above by September 14, 2012.

**Written Statements:** Written statements should be supplied to the DFO via email to [nugent.angela@epa.gov](mailto:nugent.angela@epa.gov) by September 14, 2012. Written statements should be supplied in one of the following acceptable file formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference.

**Accessibility:** For information on access or services for individuals with disabilities, please contact Dr. Nugent, as appropriate at the contact information provided above. To request accommodation of a disability, please contact Dr. Nugent preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: August 16, 2012.

**Thomas H. Brennan,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2012-21206 Filed 8-27-12; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9721-1]

### Meeting of the National Drinking Water Advisory Council

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or agency) is announcing a meeting of the National Drinking Water Advisory Council (NDWAC or Council), established under the Safe Drinking Water Act (SDWA). This meeting was originally scheduled (and announced in a **Federal Register** notice) for September 12 and 13, 2012, in Chicago, Illinois. While the meeting will still be held in Chicago, it will now be held on October 4 and 5, 2012. The Council will consider various issues associated with drinking water protection and public water systems. Specifically, the primary focus will be for the Council to consult with EPA regarding perchlorate and a National Primary Drinking Water Rule for this contaminant under the SDWA. Also at this meeting, the Council will discuss other program issues.

**DATES:** The meeting on October 4, 2012, will be held from 8:30 a.m. to 5:00 p.m., Central Time, and on October 5, 2012, from 8:30 a.m. to 3:00 p.m., Central Time.

**ADDRESSES:** The meeting will be held at EPA's Chicago Regional Office (EPA Region 5) at the Ralph Metcalfe Federal Building, 77 West Jackson Blvd., Chicago, IL 60604-3590 and will be open to the public. All attendees must go through a metal detector, sign in with the security desk, and show government issued photo identification to enter government buildings.

**FOR FURTHER INFORMATION CONTACT:** Members of the public who would like to register and receive pertinent information, present an oral statement or submit a written statement for the October 4 and 5 meeting should contact Roy Simon, by September 15; by email at [Simon.Roy@epa.gov](mailto:Simon.Roy@epa.gov); by phone at 202-564-3868; or by regular mail at U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania

Avenue NW., Washington, DC 20460. Further details about participating in the meeting can be found in the **SUPPLEMENTARY INFORMATION** section.

**SUPPLEMENTARY INFORMATION:** This meeting was originally scheduled (and announced in a **Federal Register** notice on June 11, 2012 (77 FR 34382) for September 12 and 13, 2012, in Chicago, Illinois. While the meeting will still be held in Chicago, it will now be held on October 4 and 5, 2012.

**Details about Participating in the Meeting:** If you wish to attend the meeting, you should provide your email address when you register. The EPA will provide updated information on the October meeting to registered individuals and organizations as the date of the meeting gets closer. The Council will allocate one hour for the public's input (1:00 p.m.-2:00 p.m., Central Time) at the meeting on October 5, 2012. Oral statements will be limited to five minutes at the meeting. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Roy Simon no later than September 15, 2012. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received for the meeting must be received by September 28, 2012 to be distributed to all members of the Council before any final discussion or vote is completed. Any statements received on or after the date just specified for the meeting will become part of the permanent file for the meeting and will be forwarded to the Council members for their information.

**National Drinking Water Advisory Council:** The Council was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act (SDWA) of 1974, Public Law 93-523, 42 U.S.C. 300j-5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Council was established under the SDWA to provide practical and independent advice, consultation and recommendations to the EPA Administrator on the activities, functions, policies, and regulations required by the SDWA.

**Special Accommodations:** For information on access or services for individuals with disabilities, please contact Roy Simon at 202-564-3868 or by email at [Simon.Roy@epa.gov](mailto:Simon.Roy@epa.gov). To request accommodation of a disability, please contact Roy Simon at least 10 days prior to the meeting to give EPA as

much time as possible to process your request.

Dated: August 20, 2012.

**Pamela Barr,**

*Acting Director, Office of Ground Water and Drinking Water.*

[FR Doc. 2012-21233 Filed 8-27-12; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9721-8]

### Notification of a Public Teleconference of the Chartered Science Advisory Board

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

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the chartered SAB to conduct quality reviews of: (1) An SAB draft review report on EPA's Toxicological Review of Libby Amphibole Asbestos and (2) an SAB draft report regarding EPA's Scientific and Technological Achievement Awards for FY2012.

**DATES:** The public teleconference will be held on September 25, 2012 from 2:00 p.m. to 5:00 p.m.

**ADDRESSES:** The public teleconference will be conducted by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing to obtain general information regarding the quality review teleconference should contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voice mail (202) 564-2218; fax (202) 565-2098 or via email at [nugent.angela@epa.gov](mailto:nugent.angela@epa.gov). General information concerning the EPA Science Advisory Board can be found on the SAB Web site at <http://www.epa.gov/sab>.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the EPA Science Advisory Board will hold a public teleconference to conduct quality reviews of two SAB draft reports. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee under FACA. The SAB will comply with the provisions of FACA and all

appropriate SAB Staff Office procedural policies.

### Background

Quality review is a key function of the chartered SAB. Draft reports prepared by SAB committees, panels, or work groups must be reviewed and approved by the chartered SAB before transmittal to the EPA Administrator. The chartered SAB makes a determination in a public meeting consistent with FACA about the quality of all draft reports and determines whether the report is ready to be transmitted to the EPA Administrator.

*Quality review of an SAB draft report reviewing EPA's Toxicological Review of Libby Amphibole Asbestos.* The chartered SAB will conduct a quality review of a draft SAB report reviewing the EPA's draft assessment entitled "Toxicological Review of Libby Amphibole Asbestos." The EPA's draft assessment evaluates cancer and noncancer health hazards and exposure-response of Libby amphibole asbestos. Background information about this advisory activity can be found on the SAB Web site at [http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr\\_activites/Libby%20Cancer%20Assessment?OpenDocument](http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Libby%20Cancer%20Assessment?OpenDocument).

*Quality review of an SAB draft STAA report.* The chartered SAB will also conduct a quality review of a draft SAB report entitled "SAB Recommendations for EPA's FY2012 Scientific and Technological Achievement Awards" (August 13, 2012 Draft). These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their publications in peer-reviewed literature. Background information about this advisory activity can be found on the SAB Web site at [http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr\\_activites/2012%20STAA%20Review?OpenDocument](http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/2012%20STAA%20Review?OpenDocument).

*Availability of Meeting Materials:* The agenda and other materials in support of the teleconference will be placed on the SAB Web site at <http://www.epa.gov/sab> in advance of the teleconference.

*Procedures for Providing Public Input:* Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of

the public can submit relevant comments pertaining to the group providing advice, EPA's charge questions and EPA review or background documents. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO for the relevant advisory committee directly. *Oral Statements:* In general, individuals or groups requesting time to make an oral presentation at a public SAB teleconference will be limited to three minutes. Those interested in being placed on the public speakers list for the September 25, 2012 teleconference should contact Dr. Nugent at the contact information provided above by September 18, 2012. *Written Statements:* Written statements should be supplied to the DFO via email to [nugent.angela@epa.gov](mailto:nugent.angela@epa.gov) by September 18, 2012. Written statements should be supplied in one of the following acceptable file formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconferences. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

*Accessibility:* For information on access or services for individuals with disabilities, please contact Dr. Nugent, as appropriate at the contact information provided above. To request accommodation of a disability, please contact Dr. Nugent preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: August 16, 2012.

**Thomas H. Brennan,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2012-21254 Filed 8-27-12; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9721-9]

**Notification of a Public Teleconference of the Science Advisory Board; Exposure and Human Health Committee****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Exposure and Human Health Committee to discuss its draft report concerning EPA's application of computational toxicology (CompTox) data in risk assessment.**DATES:** The public teleconferences will be held on Monday September 24, 2012 from 2 p.m. to 5 p.m. (Eastern Daylight Time).**ADDRESSES:** The teleconference will be conducted by telephone only.**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wants further information concerning the meeting may contact Dr. Sue Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1300 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voice mail (202) 564-2057; fax (202) 565-2098; or email at [shallal.suhair@epa.gov](mailto:shallal.suhair@epa.gov). General information concerning the SAB can be found on the SAB Web site at <http://www.epa.gov/sab>.**SUPPLEMENTARY INFORMATION:****Background**

Pursuant to the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App., notice is hereby given that the SAB Exposure and Human Health Committee (EHC) will hold a public teleconference to discuss its draft response to the charge questions regarding the EPA computational toxicology program. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB EHC along with liaison members of the FIFRA Scientific Advisory Panel (SAP) held a public meeting on May 30-31, 2012 to receive a briefing on EPA's CompTox program and plans for advancing the application

of CompTox data into the development of EPA risk assessments. The purpose of this public teleconference is for the Committee to discuss its draft report on this advisory activity. Additional background on this SAB advisory activity is provided in the **Federal Register** notice published on April 30, 2012 (Vol 77 FR 83: 25479). The Committee's draft report will be posted on the SAB Web site prior to the teleconference.

**Availability of Meeting Materials:** A meeting agenda, draft report, and other materials for the teleconferences will be placed on the SAB Web site at [www.epa.gov/sab](http://www.epa.gov/sab).

**Procedures for Providing Public Input:** Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments pertaining to the group conducting this advisory activity, EPA's charge, or meeting materials. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB to consider. Members of the public wishing to provide comment should contact the Designated Federal Officer for the relevant advisory committee directly. **Oral Statements:** In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to five minutes per speaker. To be placed on the public speaker list for the September 24, 2012 meeting, interested parties should notify Dr. Sue Shallal, DFO, by email no later than September 19, 2012. **Written Statements:** Written statements for these teleconferences should be received in the SAB Staff Office by the same deadlines given above for requesting oral comments. Written statements should be supplied to the DFO via email (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of

the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

**Accessibility:** For information on access or services for individuals with disabilities, please contact Dr. Shallal at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 20, 2012.

**Thomas H. Brennan,***Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2012-21212 Filed 8-27-12; 8:45 am]

**BILLING CODE 6560-50-P****EXPORT-IMPORT BANK OF THE UNITED STATES**

[Public Notice: 2012-0446]

**Application for Final Commitment for a Long-term Loan or Financial Guarantee in Excess of \$100 million****AGENCY:** Export-Import Bank of the United States.**ACTION:** Notice of 25 day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million.

**Reason for Notice:** This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States ("Ex-Im Bank"), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

**Reference:** AP087112XX.**Purpose and Use:**

Brief description of the purpose of the transaction:

To support the export of commercial aircraft to Dubai.

Brief non-proprietary description of the anticipated use of the items being exported:

Aircraft to be exported to Dubai for use in commercial passenger air service between the UAE and other countries.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being

exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

*Parties:*

Principal Supplier: The Boeing Company

Obligor: Dubai Aviation Corporation trading as flydubai

Guarantor(s): N/A

*Description of Items Being Exported:*

Boeing 737 aircraft.

*Information on Decision:* Information on the final decision for this transaction will be available in the "Summary Minutes of Meetings of Board of Directors" on <http://www.exim.gov/articles.cfm/board%20minute>.

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**DATES:** Comments must be received on or before September 24, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

**ADDRESSES:** Comments may be submitted through [WWW.REGULATIONS.GOV](http://WWW.REGULATIONS.GOV).

**Kathryn Hoff-Patrinos,**

*Deputy General Counsel.*

[FR Doc. 2012-21156 Filed 8-27-12; 8:45 am]

**BILLING CODE 6690-01-P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2012-0447]

### Application for Final Commitment for a Long-term Loan or Financial Guarantee in Excess of \$100 million

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice of 25-day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million.

#### Reason for Notice

This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States ("Ex-Im Bank"), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of \$100

million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

*Reference:* AP086944XX.

#### Purpose and Use

*Brief description of the purpose of the transaction:*

To support the export of commercial aircraft to Ireland.

Brief non-proprietary description of the anticipated use of the items being exported:

To be sub-leased to SpiceJet for short- and medium-haul passenger air service in India and between India and regional destinations.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

#### Parties

*Principal Supplier:* The Boeing Company.

*Obligor:* AWAS Aviation Trading Limited.

*Guarantor(s):* N/A.

*Description of Items Being Exported:* Boeing 737 aircraft.

*Information on Decision:* Information on the final decision for this transaction will be available in the "Summary Minutes of Meetings of Board of Directors" on <http://www.exim.gov/articles.cfm/board%20minute>.

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**DATES:** Comments must be received on or before September 24, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

**ADDRESSES:** Comments may be submitted through [WWW.REGULATIONS.GOV](http://WWW.REGULATIONS.GOV).

**Kathryn Hoff-Patrinos,**

*Deputy General Counsel.*

[FR Doc. 2012-21157 Filed 8-27-12; 8:45 am]

**BILLING CODE 6690-01-P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2012-0448]

### Application for Final Commitment for a Long-term Loan or Financial Guarantee in Excess of \$100 Million

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice of 25 day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million.

*Reason for Notice:* This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States ("Ex-Im Bank"), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

*Reference:* AP086953XX.

#### Purpose and Use

Brief description of the purpose of the transaction:

To support the export of commercial aircraft to Ireland.

Brief non-proprietary description of the anticipated use of the items being exported:

To be sub-leased to foreign airlines (acceptable to Ex-Im Bank), to be determined at a later date, for short- and medium-haul passenger air service in East Asia, South Asia, and/or Europe.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

#### Parties

*Principal Supplier:* The Boeing Company.

*Obligor:* AWAS Aviation Trading Limited.

*Guarantor(s):* N/A.

#### Description of Items Being Exported

Boeing 737 aircraft.

*Information on Decision:* Information on the final decision for this transaction will be available in the "Summary Minutes of Meetings of Board of Directors" on <http://www.exim.gov/articles.cfm/board%20minute>.

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**DATES:** Comments must be received on or before September 24, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

**ADDRESSES:** Comments may be submitted through [www.regulations.gov](http://www.regulations.gov).

**Kathryn Hoff-Patrinis,**  
Deputy General Counsel.

[FR Doc. 2012-21160 Filed 8-27-12; 8:45 am]

BILLING CODE 6690-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a

collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 29, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202-395-5167 or via Internet at [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) and to Benish Shah, Federal Communications Commission, via the Internet at [Benish.Shah@fcc.gov](mailto:Benish.Shah@fcc.gov). To submit your PRA comments by email send them to: [PRA@fcc.gov](mailto:PRA@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Benish Shah, Office of Managing Director, (202) 418-7866.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0773.

*Title:* Section 2.803, Marketing of RF Devices Prior to Equipment Authorization.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 6,000.

*Estimated Time per Response:* 0.5 hours.

*Frequency of Response:* One time reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i), 302, 303, 303(r), and 307.

*Total Annual Burden:* 3,000 hours.

*Total Annual Costs:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full year three year clearance from them. The Commission is requesting an extension (no change in the reporting and/or third party disclosure requirements) of this information collection. The Commission is reporting no change in the burden estimates. The Commission has established rules for the marketing and authorization of radio frequency (RF) devices under guidelines in 47 CFR Part 2, Section 2.803. The general guidelines

in Section 2.803 prohibit the marketing or sale of such equipment prior to a demonstration of compliance with the applicable equipment authorization and technical requirements in the case of a device subject to verification or Declaration of Conformity. The following general guidelines apply for third party notifications:

(a) A RF device may be advertised and displayed at a trade show or exhibition prior to a demonstration of compliance with the applicable technical standards and compliance with the applicable equipment authorization procedure provided the advertising and display is accompanied by a conspicuous notice specified in *Section 2.803(c)*.

(b) An offer for sale solely to business, commercial, industrial, scientific, or medical users of an RF device in the conceptual, developmental, design or pre-production stage prior to demonstration of compliance with the equipment authorization regulations may be permitted provided that the prospective buyer is advised in writing at the time of the offer for sale that the equipment is subject to FCC rules and that the equipment will comply with the appropriate rules before delivery to the buyer or centers of distribution.

(c) There are no FCC requirements for how this notice of compliance is to be phrased.

The information to be disclosed about marketing of the RF device is intended:

(a) To ensure the compliance of the proposed equipment with Commission rules; and

(b) To assist industry efforts to introduce new products to the marketplace more promptly.

The information disclosure applies to a variety of RF devices that:

(a) Is pending equipment authorization or verification of compliance;

(b) May be manufactured in the future; and

(c) Operates under varying technical standards.

The information disclosed is essential to ensuring that interference to radio communications is controlled.

Federal Communications Commission.

**Bulah P. Wheeler,**

Deputy Manager, Office of the Secretary,  
Office of Managing Director.

[FR Doc. 2012-21069 Filed 8-27-12; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION****Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 29, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Judith B. Herman, Federal Communications Commission, via the Internet at [Judith-b.herman@fcc.gov](mailto:Judith-b.herman@fcc.gov). To submit your PRA comments by email send them to: [PRA@fcc.gov](mailto:PRA@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, (202) 418–0214.

**SUPPLEMENTARY INFORMATION:**

OMB Control Number: 3060–1031.

*Title:* Commission's Initiative to Implement Enhanced 911 (E911) Emergency Services.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 858 respondents; 1,992 responses.

*Estimated Time per Response:* 3.3012048 hours.

*Frequency of Response:* On occasion and one time reporting requirements, recordkeeping requirement and third party disclosure requirement.

*Obligation to Respond:* Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i), 160, 201, 251–254, 303 and 332.

*Total Annual Burden:* 10,168 hours.

*Total Annual Cost:* N/A.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* Although the Commission does not believe that any confidential information will need to be disclosed in order to comply with the certification and notification requirements and the corresponding PSAP response provisions, covered carriers or PSAPs are free to request that materials or information submitted to the Commission be withheld from public inspection and from the E911 web site. Entities wishing to submit confidential information may do so according to 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission seeks Office of Management and Budget (OMB) approval for an extension (no change in the reporting, recordkeeping and third party disclosure requirements) after this comment period. There is no change in the Commission's 2009 burden estimates.

Under the Commission's E911 rules, a wireless carrier must provide E911 service to a particular Public Safety Answering Point (PSAP) within six months only if that PSAP makes a request for the service and is capable of receiving and utilizing the information provided. In the City of Richardson, TX Order, the Commission's actions were intended to facilitate the E911 implementation process by encouraging parties to communicate with each other early in the implementation process, and to maintain a constructive, on-going dialog throughout the implementation process.

The Order contains the following information collection requirements for which the Commission seeks continued OMB approval:

(a) The Commission established a procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their compliance obligation temporarily tolled, if the PSAP is not ready to receive the information at the end of the six-month period, and the carrier files a certification to that effect with the Commission.

(b) As part of the certification and notification process (third party disclosure requirements), a carrier must notify the PSAP of its intent to file a certification with the Commission that the PSAP is not ready to receive and use the information. The PSAP is permitted to send a response to the carrier's notification to affirm that it is not ready to receive E911 information or to challenge the carrier's characterization of its state of readiness. Carriers are required to include any response they receive from the PSAP in their certification filing to the Commission.

(c) The Commission clarified that noting in its rules prevented wireless carriers and PSAPs from mutually agreeing to an E911 deployment schedule at variance with the schedule contained in the Commission's rules. Carriers and PSAPs may choose to participate in the certification and private negotiation process. The Commission does not require participation.

The Commission will use the certification filings from wireless carriers to determine each carrier's compliance with its E911 obligations. The Commission will review carrier certifications to ensure that carriers have sufficiently explained the basis for their conclusion that a particular PSAP will not be ready and have identified all of the specific steps for the PSAP to provide the requested service. The Commission retains the discretion to investigate a carrier's certification and take enforcement action if appropriate.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2012–21070 Filed 8–27–12; 8:45 am]

**BILLING CODE 6712–01–P**

**FEDERAL COMMUNICATIONS COMMISSION****Information Collection Being Submitted for Review and Approval to the Office of Management and Budget**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written comments should be submitted on or before September 27, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202-395-5167, or via email *Nicholas.A.-Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418-2918. To view a copy of this information collection

request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:**

*Control Number:* 3060-0031.

*Title:* Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

*Form Number:* FCC Forms 314 and 315.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; State, local or Tribal government.

*Number of Respondents and Responses:* 4,840 respondents and 12,880 responses.

*Estimated Time per Response:* 0.084 to 6 hours.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303(b) and 308 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 18,670 hours.

*Total Annual Cost:* \$52,519,656.

*Privacy Impact Assessment(s):* No impacts.

*Nature and Extent of Confidentiality:* There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

*Needs and Uses:* On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking ("Rural First R&O") in MB Docket No. 09-52, FCC 10-24, 25 FCC Rcd 1583 (2010). In the

Rural First R&O, the Commission adopted a Tribal Priority under Section 307(b) of the Communications Act of 1934, as amended, to assist federally recognized Native American Tribes and Alaska Native Villages ("Tribes") and entities primarily owned or controlled by Tribes in obtaining broadcast radio construction permits designed primarily to serve Tribal Lands (the "Tribal Priority"). Tribal affiliated applicants that meet certain conditions regarding Tribal membership and signal coverage qualify for the Tribal Priority, which in most cases will enable the qualifying applicants to obtain radio construction permits without proceeding to competitive bidding, in the case of commercial stations, or to a point system evaluation, in the case of noncommercial educational ("NCE") stations.

On March 3, 2011, the Commission adopted a Second Report and Order ("Rural Second R&O"), First Order on Reconsideration, and Second Further Notice of Proposed Rule Making in MB Docket No. 09-52, FCC 11-28, 26 FCC Rcd 2556 (2011). On December 28, 2011, the Commission adopted a Third Report and Order in MB Docket No. 09-52, FCC 11-190, 26 FCC Rcd 17642 (2011) ("Rural Third R&O"). In the Rural Third R&O the Commission further refined the use of the Tribal Priority in the commercial FM radio context, specifically adopting a "Threshold Qualifications" approach to commercial FM application processing.

Furthermore, under the Commission's Tribal Priority procedures, entities obtaining:

(a) An AM authorization for which the applicant claimed and received a dispositive Section 307(b) priority because it qualified for the Tribal Priority; or

(b) An FM commercial non-reserved band station awarded:

(1) To the applicant as a singleton Threshold Qualifications Window applicant,

(2) To the applicant after a settlement among Threshold Qualifications Window applicants, or

(3) To the applicant after an auction among a closed group of bidders composed only of threshold qualified Tribal applicants; or

(c) A reserved-band NCE FM station for which the applicant claimed and received the Tribal Priority in a fair distribution analysis as set forth in 47 CFR 73.7002(b)(1), may not assign or transfer the authorization during the period beginning with issuance of the construction permit, until the station has completed four years of on-air operations, unless the assignee or

transferee also qualifies for the Tribal Priority. Pursuant to procedures set forth in the Rural Third R&O, 26 FCC Rcd at 17645–50, the Tribal Priority Holding Period is now applied in the context of authorizations obtained using Tribal Priority Threshold Qualifications.

Consistent with actions taken by the Commission in the Rural Third R&O, the following changes are made to Forms 314 and 315: Section I of each form includes a question asking applicants to indicate whether any of the authorizations involved in the subject transaction were obtained: after award of a dispositive Section 307(b) preference using the Tribal Priority; through Threshold Qualification procedures; or through the Tribal Priority as applied before the NCE fair distribution analysis. A subsequent question then asks whether both the assignor/transferee and assignee/transferee qualify for the Tribal Priority in all respects. Applicants not meeting the Tribal Priority qualifications and proposing an assignment or transfer during the Holding Period must provide an exhibit demonstrating that the transaction is consistent with the Tribal Priority policies or that a waiver is warranted. The instructions for Section I of Forms 314 and 315 have been revised to assist applicants with completing the questions.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary,  
Office of Managing Director.*

[FR Doc. 2012–21071 Filed 8–27–12; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission,

including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before October 29, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0182.

*Title:* Section 73.1620, Program Tests.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit, Not-for-profit institutions.

*Number of Respondents and Responses:* 1,470 respondents; 1,470 responses.

*Estimated Time per Response:* 1–5 hours.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 1,521 hours.

*Total Annual Cost:* None.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection.

*Needs and Uses:* 47 CFR 73.1620(a)(1) requires permittees of a nondirectional AM or FM station, or a nondirectional or directional TV station to notify the

FCC upon beginning of program tests. An application for license must be filed within 10 days of this notification. 47 CFR 73.1620(a)(2) requires a permittee of an AM or FM station with a directional antenna to file a request for program test authority 10 days prior to date on which it desires to begin program tests. This is filed in conjunction with an application for license. 47 CFR 73.1620(a)(3) requires a licensee of an FM station replacing a directional antenna without changes to file a modification of the license application within 10 days after commencing operations with the replacement antenna. 47 CFR 73.1620(a)(4) requires a permittee of an AM station with a directional antenna to file a request for program test authority 10 days prior to the date on which it desires to begin program test. 47 CFR 73.1620(a)(5) requires that, except for permits subject to successive license terms, a permittee of an LPFM station may begin program tests upon notification to the FCC in Washington, DC provided that within 10 days thereafter an application for license is filed. Program tests may be conducted by a licensee subject to mandatory license terms only during the term specified on such license authorization. 47 CFR 73.1620(b) allows the FCC to right to revoke, suspend, or modify program tests by any station without right of hearing for failure to comply adequately with all terms of the construction permit or the provision of 47 CFR 73.1690(c) for a modification of license application, or in order to resolve instances of interference. The FCC may also require the filing of a construction permit application to bring the station into compliance with the Commission's rules and policies. 47 CFR 73.1620(f) requires licensees of UHF TV stations, assigned to the same allocated channel which a 1000 watt UHF translator station is authorized to use, to notify the licensee of the translator station at least 10 days prior to commencing or resuming operation and certify to the FCC that such advance notice has been given. 47 CFR 73.1620(g) requires permittees to report any deviations from their promises, if any, in their application for license to cover their construction permit (FCC Form 302) and on the first anniversary of their commencement of program tests.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary,  
Office of Managing Director.*

[FR Doc. 2012–21179 Filed 8–27–12; 8:45 am]

**BILLING CODE 6712–01–P**

**FEDERAL DEPOSIT INSURANCE CORPORATION****FDIC Advisory Committee on Economic Inclusion (Come-IN); Notice of Meeting**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

**DATES:** Wednesday, September 12, 2012, from 8:45 a.m. to 3:30 p.m.

**ADDRESSES:** The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC

**FOR FURTHER INFORMATION CONTACT:** Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898-7043.

**SUPPLEMENTARY INFORMATION:** *Agenda:* The agenda will be focused on results of the FDIC's National Survey of Unbanked and Underbanked Households, an update on the Mobile Financial Services Subcommittee, and Model Safe Accounts. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

*Type of Meeting:* The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562-6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Come-IN meeting will be Webcast live via the Internet at: <http://www.vodium.com/goto/fdic/advisorycommittee.asp>. This service is free and available to anyone with the following systems requirements: <http://www.vodium.com/home/sysreq.html>. Adobe Flash Player

is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at [http://www.adobe.com/shockwave/download/download.cgi?P1\\_Prod\\_Version=ShockwaveFlash](http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash). Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The Come-IN meeting videos are made available on-demand approximately two weeks after the event.

Dated: August 23, 2012.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary, Federal Deposit Insurance Corporation.*

[FR Doc. 2012-21124 Filed 8-27-12; 8:45 am]

**BILLING CODE 6714-01-P**

**FEDERAL RESERVE SYSTEM****Proposed Agency Information Collection Activities; Comment Request**

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before October 29, 2012.

**ADDRESSES:** You may submit comments, identified by FR 4022 by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

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

- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include OMB number in the subject line of the message.

- *FAX:* 202/452-3819 or 202/452-3102.

- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at [www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm](http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm) as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: <http://www.federalreserve.gov/boarddocs/reportforms/review.cfm> or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829). Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:****Request for Comment on Information Collection Proposal**

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information

collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;
- b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 information 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.

**Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report**

*Report title:* Recordkeeping Requirements Associated with the Interagency Statement on Complex Structured Finance Activities.

*Agency form number:* FR 4022.

*OMB control number:* 7100-0311.

*Frequency:* Annual.

*Reporters:* State member banks, bank holding companies, and U.S. branches and agencies of foreign banks supervised by the Federal Reserve.

*Estimated annual reporting hours:* 200 hours.

*Estimated average hours per response:* 10 hours.

*Estimated number of respondents:* 20.

*General description of report:* The FR 4022 is authorized by sections 11(a), 11(i), 21, and 25 of the Federal Reserve Act (12 U.S.C. 248(a), 248(i), 483, and 602), section 5 of the Bank Holding Company Act (12 U.S.C. 1844), and section 13(a) of the International Banking Act (12 U.S.C. 3108(a)) and is voluntary guidance for supervised institutions. However, the Federal Reserve expects to use the Statement in reviewing the internal controls and risk management systems of those financial institutions engaged in Complex Structured Finance Activities (CSFTs) as part of the Federal Reserve's supervisory process. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, in the event

records generated under the guidance are obtained by the Federal Reserve during an examination of a state member bank or U.S. branch or agency of a foreign bank, or during an inspection of a bank holding company, confidential treatment may be afforded to the records under exemption 8 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(8). FOIA exemption 8 exempts from disclosure matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

*Abstract:* The Interagency Statement on Complex Structured Finance Activities provides that state member banks, bank holding companies, and U.S. branches and agencies of foreign banks supervised by the Federal Reserve should establish and maintain policies and procedures for identifying, evaluating, assessing, documenting, and controlling risks associated with certain CSFTs. A financial institution engaged in CSFTs should maintain a set of formal, firm-wide policies and procedures that are designed to allow the institution to identify, evaluate, assess, document, and control the full range of credit, market, operational, legal, and reputational risks associated with these transactions. These policies may be developed specifically for CSFTs, or included in the set of broader policies governing the institution generally. A financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations and standards of those jurisdictions. A financial institution's policies and procedures should establish a clear framework for the review and approval of individual CSFTs. These policies and procedures should set forth the responsibilities of the personnel involved in the origination, structuring, trading, review, approval, documentation, verification, and execution of CSFTs. A financial institution should define what constitutes a new complex structured finance product and establish a control process for the approval of such new products. An institution's policies also should provide for new complex structured finance products to receive the approval of all relevant control areas that are independent of the profit center before the product is offered to customers.

Board of Governors of the Federal Reserve System, August 22, 2012.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2012-21117 Filed 8-27-12; 8:45 am]

**BILLING CODE 6210-01-P**

**FEDERAL RESERVE SYSTEM**

**Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 11, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Blaine Scott White*, Castlewood, Virginia, individually; and *Blaine Scott White Trust* (trustee, *Blaine Scott White*), *Blaine Scott White II*, *Irrevocable Trust* (trustee, *Blaine Scott White*), and *Brenda D. White*, all of Castlewood, Virginia; *Tiffany White*, *Evergreen, Colorado*; *James F. White, Jr.*, and *Patricia Jolene White*, both of *Abingdon, Virginia*; *Bonny W. Gable of Bristol, Virginia*; along with other family members as a group acting in concert to acquire voting shares of *New Peoples Bankshares, Inc.*, and thereby indirectly acquire voting shares of *New Peoples Bank, Inc.*, both in *Honaker, Virginia*.

2. *Harold Lynn Keene*, individually, and *Harold Lynn Keene and Arbutus Keene*, all of *Lebanon, Virginia*, as a group acting in concert to acquire voting shares of *New Peoples Bankshares, Inc.*, and thereby indirectly acquire voting shares of *New Peoples Bank, Inc.*, both in *Honaker, Virginia*.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Jeffrey D. Snyder*, individually and acting in concert with *Rhonda R. Snyder*, both of *Baileyville, Illinois*; to

acquire control of High Point Financial Services, Inc., and thereby indirectly acquire control Forrester State Bank, both in Forrester, Illinois, and Kent Bank, Kent, Illinois.

C. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166-2034:

1. *Barbara K. Ferry*, Nevada, Missouri; to acquire voting shares of Mid-Missouri Bancshares, Inc., and thereby indirectly acquire voting shares of Mid-Missouri Bank, both in Springfield, Missouri.

Board of Governors of the Federal Reserve System, August 22, 2012.

**Robert deV. Frierson**,  
*Secretary of the Board.*

[FR Doc. 2012-21120 Filed 8-27-12; 8:45 am]

**BILLING CODE 6210-01-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 part 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 September 21, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166-2034:

1. *Home BancShares, Inc.*, Conway, Arkansas; to acquire 100 percent of the voting shares of Premier Bank, Tallahassee, Florida.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105-1579:

1. *Western Alliance Bancorporation*, Phoenix, Arizona; to merge with Western Liberty Bancorp, and thereby indirectly acquire Service1st Bank of Nevada, both in Las Vegas, Nevada.

In connection with this application, Applicant has also applied to acquire Las Vegas Sunset Properties, Las Vegas, Nevada, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1).

Dated: Board of Governors of the Federal Reserve System, August 23, 2012.

**Margaret McCloskey Shanks**,  
*Associate Secretary of the Board.*

[FR Doc. 2012-21159 Filed 8-27-12; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2012-200028) published on pages 48983 and 48984 of the issue for Wednesday, August 15, 2012.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Frandsen Financial Corporation, Arden Hills, Minnesota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Frandsen Financial Corporation*, Arden Hills, Minnesota; to acquire 100 percent of the voting shares of Clinton State Bank, Clinton, Minnesota.

Comments on this application must be received by September 7, 2012.

Dated: Board of Governors of the Federal Reserve System, August 22, 2012.

**Robert deV. Frierson**,  
*Secretary of the Board.*

[FR Doc. 2012-21119 Filed 8-27-12; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *American Bancorporation, Inc.*, Sapulpa, Oklahoma; to acquire Osage Bancshares, Inc., and thereby indirectly acquire Osage Federal Bank, both in Pawhuska, Oklahoma, and thereby engage in operating a federal savings bank, pursuant to section 225.28(b)(4)(ii).

Dated: Board of Governors of the Federal Reserve System, August 22, 2012.

**Robert deV. Frierson**,  
*Secretary of the Board.*

[FR Doc. 2012-21118 Filed 8-27-12; 8:45 am]

**BILLING CODE 6210-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS-0955-0002]

### Agency Information Collection Request. 60-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request 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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number and the document identifier OS-0955-0002, to [Information.Collection.Clearance@hhs.gov](mailto:Information.Collection.Clearance@hhs.gov) or call the Information Collection Clearance Office on (202) 690-6162. Comments and

recommendations for the proposed information collection must be received within 60 days of the issuance of this notice.

**Proposed Project:** Facts for Consumers about Health IT Service Providers (Revision)—OMB No. 0955-0002-OS/ Office of the National Coordinator for Health Information Technology

**Abstract:** ONC is proposing to revise current OMB approved Facts for Consumers about Health IT Service Providers. The current OMB approval is applicable through September 30, 2012. It includes iterative rounds of in-depth consumer testing to assess and analyze consumer understanding and input about a model privacy notice for personal health records (PHRs). ONC intends to revise the project to use the same focus group and cognitive usability interview testing process for the development of a model notice of privacy practices (NPP). 45 CFR 164.520 requires covered entities to make available a NPP for protected health information to their patients or health plan members. The notice must, among other things, outline the purposes for which the covered entity is permitted to use and disclose health information, the rights of individuals with respect to

their health information, the entities' duties to protect that information, and the process for filing a complaint concerning possible violations of the HIPAA Privacy Rule, such as an improper use or disclosure of information. 45 CFR 164.520 requires that the notice be written in plain language, but studies have shown that these notices are often difficult for patients to understand due to their length and complexity.

The Federal Health IT Strategic Plan identifies the Fair Information Practice Principles (FIPPS) an important guidepost in the development of privacy policies and programs. Openness and Transparency is a key principle of fair information practices. The NPP is an important component of fulfilling this principle. If patients cannot adequately understand the notice because of its length or complexity, then the use and disclosure of their health information is not open and transparent.

In addition, each participant will have been recruited through a 15-minute screening interview. The participants will be recruited according to U.S. census statistics for race/ethnicity, age, marital status, gender, and income.

**ESTIMATED ANNUALIZED BURDEN TABLE**

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Cognitive Testing Screening .....	General Public	84	1	15/60	21
Cognitive Testing .....	General Public	42	1	90/60	63
Total .....	.....	126	.....	.....	84

**Keith A. Tucker,**  
*Information Collection Clearance Officer,*  
*Department of Health and Human Services.*  
 [FR Doc. 2012-21103 Filed 8-27-12; 8:45 am]  
**BILLING CODE 4150-45-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Findings of Research Misconduct**

**AGENCY:** Office of the Secretary, HHS.  
**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

*Shane Mayack, Ph.D., Joslin Diabetes Center:* Based on the report of an investigation conducted by the Joslin Diabetes Center (Joslin) and additional analysis conducted by ORI in its oversight review, ORI found that Dr.

Shane Mayack, former postdoctoral fellow, Department of Developmental and Stem Cell Biology, Joslin, engaged in research misconduct in research supported by National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH), grants T32 DK07260-29 and P30 DK036836 and the 2008 NIH Director's New Innovator Award Program grant DP2 OD004345-01.

ORI found that Respondent engaged in research misconduct involving two (2) published papers:

- Mayack, S.R., Shadrach, J.L., Kim, F.S., & Wagers, A.J. "Systemic signals regulate ageing and rejuvenation of blood stem cell niches." *Nature* 463:495-500, 2010.
- Mayack, S.R., & Wagers, A.J. "Osteolineage niche cells initiate hematopoietic stem cell mobilization." *Blood* 112:519-531, 2008.

As a result of Joslin's investigation, both *Nature* 463:495-500, 2010 (hereafter referred to as the "*Nature* paper") and *Blood* 112:519-531, 2008 (hereafter referred to as the "*Blood* paper") have been retracted by the corresponding author.

Specifically, ORI found that:

- Respondent falsely represented von Kossa-stained bone nodule images in two (2) published papers:
  - a. Figure 2B in the *Blood* paper was copied from an unrelated published experiment in Figure 3, *J Orth Surg Res* 1:7, 2006, and was used to falsely represent Respondent's own experiment for bone nodules formed in cultured osteoblastic niche cells.
  - b. Figure S2c in the *Nature* paper was copied from an online image for an unrelated experiment (at [http://skeletalbiology.uchc.edu/30\\_ResearchProgram/304\\_gap/3042\\_Lineage%20in%20Vitro/3042\\_01\\_aCellCult.htm#mCOB](http://skeletalbiology.uchc.edu/30_ResearchProgram/304_gap/3042_Lineage%20in%20Vitro/3042_01_aCellCult.htm#mCOB)) and was

used to falsely represent Respondent's own experiment for bone nodules formed in osteoblastic niche cells from young and aged mice.

- Respondent falsely represented eight (8) flow cytometry contour plots as different experimental results by using identical plots but with different labels and different numerical percentages. Specifically, the following contour plots in the *Blood* paper, the *Nature* paper, an earlier version of the *Nature* paper submitted to *Science* (hereafter referred to as the "*Science* manuscript"), and a July 2008 PowerPoint presentation were identical but were labeled differently:
  - a. Panels 4 and 2 in Figure 6C, *Blood* paper, and panels 1 and 2, respectively, in supplementary Figure 3b, *Nature* paper
  - b. Panel 3 in Figure 6C, *Blood* paper, and panel 1 in Figure 2, July 2008 PowerPoint presentation
  - c. Panels 1 and 2, Figure 2b, *Science* manuscript, and panels 2 and 3, respectively, in Figure 2, July 2008 PowerPoint presentation
  - d. Panels 2, 3, and 4, supplemental Figure 4A, *Blood* paper, and panels 3, 1, and 2, respectively, in Figure 4B, *Science* manuscript

Both the Respondent and HHS want to conclude this matter without further expenditure of time or other resources and have entered into a Voluntary Settlement Agreement to resolve this matter. Respondent neither admits nor denies ORI's finding of research misconduct. This settlement does not constitute an admission of liability on the part of the Respondent. Dr. Mayack has voluntarily agreed:

(1) If within three (3) years from the effective date of the Agreement, Respondent does receive or apply for U.S. Public Health Service (PHS) support, Respondent agrees to have her research supervised for a period of three (3) years beginning on the date of her employment in a research position in which she receives or applies for PHS support and to notify her employer(s)/ institution(s) of the terms of this supervision; Respondent agrees that prior to the submission of an application for PHS support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agrees that she shall not participate in any PHS-supported

research until such a supervision plan is submitted to and approved by ORI; Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan;

(2) If within three (3) years from the effective date of the Agreement, Respondent does receive or apply for PHS support, Respondent agrees that any institution employing her shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract; and

(3) To exclude herself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on July 27, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453-8800.

**John Dahlberg,**

*Director, Division of Investigative Oversight, Office of Research Integrity.*

[FR Doc. 2012-21236 Filed 8-27-12; 8:45 am]

**BILLING CODE 4150-31-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-10003]

**Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB); Correction**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of notice.

**SUMMARY:** This document corrects a technical error in the notice [Document Identifier: CMS-10003] entitled "Notice of Denial of Medical Coverage (or Payment)" that was published in the July 6, 2012 (77 FR 40064) **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** William Parham, (410) 786-4669.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the FR Doc. 2012-16514 of July 6, 2012 (77 FR 40064), we published a Paperwork Reduction Act notice requesting a 60-day public comment period for the document entitled "Notice of Denial of Medical Coverage (or Payment)."

In the July 6, 2012 notice, we listed the incorrect contact information. Therefore, we are correcting that error in this notice.

**II. Correction of Error**

In FR Doc. 2012-16514 of July 6, 2012 (77 FR 40064), make the following correction:

On page 40068, first column, fourth full paragraph, on the fifteenth line in the paragraph beginning with "(For policy questions regarding, " and ending with, "410-786-0273)," is corrected to read as follows.

"(For policy questions regarding this collection contact Kathryn McCann Smith at 410-786-7623.)"

Dated: August 22, 2012.

**Martique Jones,**

*Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2012-21076 Filed 8-23-12; 11:15 am]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2008-E-0102]

**Determination of Regulatory Review Period for Purposes of Patent Extension; TORISEL**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for TORISEL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product. **ADDRESSES:** Submit electronic comments to <http://www.regulations.gov>. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6222, Silver Spring, MD 20993-0002, 301-796-3602.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human drug product TORISEL (temsirolimus). TORISEL is indicated for the treatment of advanced renal cell carcinoma. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TORISEL (U.S. Patent No. 5,362,718) from Wyeth, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration and that FDA determine the product's regulatory review period. In a letter dated August 7, 2012, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TORISEL represented the first permitted

commercial marketing or use of the product.

FDA has determined that the applicable regulatory review period for TORISEL is 3,290 days. Of this time, 3,052 days occurred during the testing phase of the regulatory review period, while 238 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 29, 1998. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 29, 1998.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* October 5, 2006. FDA has verified the applicant's claim that the new drug application (NDA) for TORISEL (NDA 22-088) was submitted on October 5, 2006.

3. *The date the application was approved:* May 30, 2007. FDA has verified the applicant's claim that NDA 22-088 was approved on May 30, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,764 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by October 29, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by February 25, 2013. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with

the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on <http://www.regulations.gov> may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 12, 2012.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 2012-21239 Filed 8-27-12; 8:45 am]

**BILLING CODE 4160-01-P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2011-N-0253]

#### Privacy Act of 1974; Report of a New System of Records; FDA Records Related to Research Misconduct Proceedings

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

**ACTION:** Notice of a Privacy Act system of records.

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**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974 (the Privacy Act) and the Food and Drug Administration's (FDA's) regulations for the protection of privacy, FDA is publishing notice of a new Privacy Act system of records entitled "FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC" System No. 09-10-0020. Under the Department of Health and Human Services' (HHS' or the Department's) Public Health Service Policies on Research Misconduct, FDA has responsibilities for addressing research integrity and misconduct issues related to FDA supported activities. This system contains records related to the processing and reviewing of allegations of scientific research misconduct levied against an individual (the respondent) who is an agent of, or affiliated by contract or agreement with, FDA, or an FDA employee involved in intramural research. Research misconduct proceedings include allegation assessments, inquiries, investigations, oversight reviews by HHS' Office of Research Integrity (ORI), hearings, and administrative appeals.

**DATES:** Effective Date: The new system of records will be effective on August 28, 2012, with the exception of the routine uses and the requested exemptions. The routine uses will become effective on October 12, 2012. As detailed in the companion

rulemaking documents published elsewhere in this issue of the **Federal Register**, unless revised or withdrawn in response to comments, the requested exemptions will become effective 135 days after publication of the companion rulemaking documents. Submit either electronic or written comments regarding this document by October 12, 2012.

**ADDRESSES:** You may submit comments, identified by Docket No. FDA-2011-N-0253, by any of the following methods:

#### *Electronic Submissions*

Submit electronic comments in the following way:

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

#### *Written Submissions*

Submit written submissions in the following ways:

- FAX: 301-827-6870.
- Mail/Hand delivery/Courier (for paper or CD-ROM submissions): Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

*Instructions:* All submissions received must include the Agency name and docket number for this document. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Eileen Parish, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4214, Silver Spring, MD 20993, 301-796-8522, [Eileen.Parish@fda.hhs.gov](mailto:Eileen.Parish@fda.hhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

### **I. New System of Records**

#### *A. Description of the System of Records*

##### 1. Collection and Maintenance of Data in the System

This system will collect and maintain personally identifiable information (PII)

and other data collected during the research misconduct process. The collected information will include, but is not limited to: Name, address, telephone number, education, professional experience, employment address, and training of an individual(s) who is (are) the subject of allegations. In addition, the system will contain records of complaints received, including the identity of the complainant, and how complaints were received and resolved. Also included will be information of witnesses and members of research misconduct committees.

#### 2. Agency Procedures

FDA's procedures for disclosures of information maintained in this system of records are set forth in 21 CFR part 21.

#### *B. Routine Use Disclosures of Information in the System*

In accordance with the Privacy Act (5 U.S.C. 552a), FDA is providing notice of the "routine uses" of the records contained in the system of records. Disclosure of such records is permitted without the written consent of the individual to whom the record pertains, if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected (5 U.S.C. 552a(b)(3)). Any such compatible use of data is known as a "routine use." The routine uses in this system meet the compatibility requirement of the Privacy Act.

The first two routine uses permit FDA to share information from this system with the individual or entity submitting an allegation; witnesses; pertinent Federal, State, and local agencies; and third parties that can provide information related to the allegation or proceeding.

In the event of a suspected or confirmed breach of security or confidentiality of the system, the third routine use allows disclosures to Federal Agencies as necessary in order to respond to the breach. Likewise, where a record indicates a violation of law, FDA may share information with the responsible enforcement authority under the fifth routine use, and may provide information to the Department of Homeland Security (DHS) in circumstances where system records are captured in an intrusion detection program and made accessible to DHS as described in routine use 15.

When health implications are evident based on information developed in the course of a proceeding, the fourth routine use permits disclosure to

research subjects, institutional review boards, and collaborating institutions.

When FDA finds research misconduct has occurred, routine uses 6 through 10 describe disclosures FDA may make to FDA supported entities (routine use 6), to the respondent's supervisor or employer (routine use 7 and 8), to publications as needed to retract research results (routine use 9), and licensing authorities (routine use 10). Similarly, routine use 12 permits disclosure of information to the parties and related institutions when FDA does not find research misconduct.

Additional routine uses common to Federal records systems provide for disclosure to contractors and others who perform services for FDA related to this system (routine use 11), to the Department of Justice (DOJ) as related to the DOJ's representation of FDA or Agency employees (routine use 13), to courts when the records are relevant in legal actions involving the U.S. Government, FDA, or Agency employees (routine use 14), and, to the National Archives and Records Administration and General Services Administration as needed in the course of records management inspections (routine use 16).

As specified in section I.K of this document (see *Routine Uses of Records Maintained in the System Including the Purposes of Such Uses and Categories of Users*), many of these routine use disclosures will be restricted and subject to confidentiality or similar nondisclosure agreements in order to protect privacy.

Because this is a law enforcement investigatory system, HHS and FDA intend to amend their Privacy Act regulations (45 CFR 5b.11 and 21 CFR 21.61, respectively) to exempt records in this system related to ongoing investigations or that would reveal a confidential source from the notification, access, and amendments provisions of the Privacy Act. These exemptions are necessary to maintain the integrity of research misconduct proceedings and allow FDA to obtain essential information. The proposed exemptions would ensure that the records related to ongoing investigations will not be disclosed inappropriately and that the identities of confidential sources will be protected. FDA and HHS are publishing companion rulemaking documents regarding these exemptions elsewhere in this issue of the **Federal Register**.

#### *C. System Number*

The system number is: 09-10-0020.

#### D. System Name

The system name is: FDA Records Related to Research Misconduct Proceedings, HHS/FDA/OC.

#### E. Security Classification

The security classification for the system is: Unclassified.

#### F. System Location

System records are located in the Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4214, Silver Spring, MD 20993. Some records may reside in the Agency component offices during the time that an allegation is under review.

#### G. Categories of Individuals Covered by the System

This system includes records related to the processing and reviewing of allegations of research misconduct levied against an individual (the respondent) who is an agent of, or affiliated by contract or agreement with FDA, or an FDA employee involved in intramural research. The records contain personally identifiable information (PII) and non-PII about respondents, complainants, witnesses and other individuals affiliated with entities that are contacted by or provide information to FDA.

Privacy Act notification, access, and amendment rights (described in this document) relative to this system are available to individuals who are subjects of records in the system, that is, respondents. Although records in the system may contain PII related to other individuals, only respondents are considered subjects of records in this system.

"Respondents" is defined as "the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding." The term "research misconduct" is defined in 42 CFR 93.103 to mean "fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results." These and other definitions are set out in 42 CFR part 93.

This system notice applies to an allegation of research misconduct involving the following: (1) Applications or proposals for FDA support for biomedical or behavioral extramural or intramural research or research training, or activities related to that research or research training; (2) FDA supported biomedical or behavioral extramural or intramural research; (3) FDA supported extramural or intramural research training

programs; (4) FDA supported extramural or intramural activities that are related to biomedical or behavioral research or research training; and (5) plagiarism of research records produced in the course of FDA supported research, research training, or activities related to that research or research training.

#### H. Categories of Records in the System

The records in the system include information that must be submitted to ORI by FDA under 42 CFR part 93 and information that FDA obtains while conducting research misconduct proceedings. This information may include, but is not limited to:

- PII about respondents such as name, date of birth, employment information, educational background, social security number, personal and professional phone numbers, mailing address, and email address;
- PII regarding complainants and witnesses such as name, and personal or work contact information;
- The nature and substance of allegations;
- Data regarding FDA funding related to the research and/or respondent, including grants numbers;
- The organization(s) and officials responsible for conducting the action that are part of the research misconduct proceeding;
- The documentation used in the inquiry and investigation, including relevant research data and materials, which may include relevant information on study subjects;
- Applications, proposals, and documentation related to review and award actions;
- Reports, abstracts, manuscripts, and publications by the respondent(s);
- Other relevant reports, abstracts, manuscripts, and publications;
- Correspondence and memoranda of telephone calls;
- Summaries of interviews and transcripts or recordings of interviews;
- Statistical, scientific, and forensic analyses;
- Interim and final FDA reports; and
- Records of Agency findings, administrative actions, and appeal proceedings, if any.

The system also contains general administrative and oversight records regarding ORI actions. This includes information related to the following: (1) ORI reviews of the research misconduct proceedings, ORI findings of research misconduct, and ORI proposals for administrative action or for settlement of the case; (2) a respondent's opportunity to contest ORI findings of research misconduct and proposed HHS administrative actions; (3) final HHS

findings of research misconduct and final decisions regarding administrative actions and their implementation; and (4) FDA and ORI coordination with other Federal, State, and local offices or agencies, including the DOJ.

#### I. Authority for Maintenance of the System

The authorities for maintaining this system are: 21 U.S.C. 371, 375, 393(d)(2), 394, 397, and 399a; 42 U.S.C. 216(b), 241, 289b; 5 U.S.C. 301; 44 U.S.C. 3101; and 42 CFR part 93.

#### J. Purpose

The purposes of this system are to do the following:

1. Enable FDA, ORI, HHS, and the Federal Government to protect the health and safety of the public, to promote the integrity of FDA supported research, and to conserve public funds.
2. Enable FDA to implement its authority relating to research misconduct proceedings as set forth in 42 CFR part 93 and to document FDA activities in implementing that authority.
3. Ensure that research misconduct proceedings, including FDA's implementation of the Agency's and other HHS administrative actions, are carried out in accordance with FDA policy, 42 CFR part 93, and other applicable Federal statutes and regulations.
4. Enable FDA to inform Agency officials and other HHS officials who have a need for the records in the performance of their duties of the status and results of research misconduct proceedings.
5. Enable FDA to notify, consult with, and provide assistance to ORI, and other Federal, State, or local agencies to permit them to take action to protect the health and safety of the public, to promote the integrity of FDA supported research, to conserve public funds, or to pursue potential violations of civil and criminal statutes.

#### K. Routine Uses of Records Maintained in the System Including the Purposes of Such Uses and Categories of Users

The Privacy Act lists the conditions for disclosure under 5 U.S.C. 552a(b). Among the permitted disclosures is disclosure "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties" (5 U.S.C. 552a(b)(1)). For this system of records, this condition would include disclosure to the appropriate FDA, ORI, and other HHS officers and employees.

Permitted disclosures also include routine uses that are listed in the notice of the system of records (5 U.S.C. 552a(b)(3)). The Privacy Act defines "routine use" as "with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected." See also FDA's Privacy Act regulations, defining "routine use" as "use outside the Department of Health and Human Services that is compatible with the purpose for which the records were collected and described in the [System of Records] notice" (21 CFR 21.20(b)(5)).

Records in this system that contain information about record subjects (respondents) and nonsubjects (witnesses, complainants, and other individuals affiliated with entities that are contacted by or provide information to FDA) may be disclosed to recipients outside HHS in accordance with the following routine uses:

1. Disclosure may be made to any individual or entity able to obtain information or provide information or assistance in a research misconduct proceeding or related proceeding. Recipients of disclosures under this routine use may include experts asked to perform statistical, forensic, or other analyses; the relevant FDA supported institution(s); institutions with which the respondent(s) was previously affiliated; Federal, State and local agencies; the respondent(s); the complainant(s); witnesses; and organizations or individuals acting on behalf of those agencies, institutions, and individuals; provided, however, that in each case FDA determines whether limited disclosures or confidentiality agreements are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects, or others who may be identified in the records to be disclosed.

2. Disclosure may be made to other Federal, State, or local agencies and offices, if FDA has reason to believe that a research misconduct proceeding may involve that agency or office.

3. Disclosure may be made to appropriate Federal Agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

4. Disclosure may be made to Institutional Review Boards, collaborating institutions, and

individual research subjects, regarding information obtained or developed through a research misconduct proceeding that, in FDA's judgment, may have implications for individuals' health or for their participation in a research study.

5. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation, if the information disclosed is relevant to the responsibilities of the agency or public authority.

6. After FDA makes a finding of research misconduct and has informed ORI of this finding, disclosure may be made to responsible officials of FDA supported institutions or organizations, when in connection with a research misconduct proceeding concerning a respondent previously or currently employed by, or affiliated with the institution or organization, or when FDA, ORI, or HHS makes a finding or takes an action potentially affecting the agency or organization or its FDA support for research, research training, or related activities.

7. After FDA makes a finding of research misconduct and has informed ORI of this finding, disclosure may be made to the respondent's supervisor because research will be a significant part of many employee jobs, and performance is an important element of information to help the supervisor determine employee assignments as well as the level of supervision needed. If an individual moves to another job or contract, FDA may notify the other entity that we have relevant information with regard to that individual.

8. After FDA makes a finding of research misconduct and has informed ORI of this finding, disclosure may be made to a Federal Agency in connection with the hiring or retention of the respondent, the issuance of a security clearance, the reporting of an investigation of an employee, or the issuance of a license or other benefit by the Agency, to the extent that the record is relevant to the Agency's decision on the matter.

9. After FDA makes a finding of research misconduct and has informed ORI of this finding, disclosure may be made to professional journals, other publications, news media, and the public concerning research misconduct findings and the need to correct or retract research results or reports that

have been affected by research misconduct, unless it is determined that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy. No information will be released that would reveal a confidential source.

10. After FDA makes a finding of research misconduct and has informed ORI of this finding, disclosure may be made to a State licensing board, certifying body, or other similar entity conducting a review of the respondent to aid the entity in meeting its responsibility to protect the health of the population in its jurisdiction or the integrity of the profession.

11. Disclosure may be made to contractors and other individuals or entities who perform services for the Agency related to this system of records and who have access to the records in order to perform such services, including individuals appointed to serve on FDA research misconduct inquiry committees or investigation committees if such individuals need access to the records to perform their assigned task. Provided, however, in each case FDA determines whether limited disclosures or confidentiality agreements are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects, or others who may be identified in the records to be disclosed; and FDA determines that the disclosure is for a purpose compatible with the purpose for which the Agency collected the records.

12. When FDA closes a case without a settlement or finding of research misconduct, disclosure may be made to the respondent, relevant institution, and complainant(s); provided, however, that in each case FDA determines whether limited disclosures or confidentiality agreements are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects, or others who may be identified in the records to be disclosed.

13. Disclosure may be made to the DOJ when: (1) The Agency or any component thereof; or (2) any employee of the Agency in his or her official capacity; or (3) any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or (4) the U.S. Government is a party to litigation or has an interest in such litigation, and by careful review, the Agency determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ is therefore deemed by the Agency to be for a purpose that is compatible with the

purpose for which the Agency collected the records.

14. Disclosure may be made to a court or other tribunal when: (1) The Agency or any component thereof; or (2) any employee of the Agency in his or her official capacity; or (3) any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or (4) the U.S. Government is a party to the proceeding or has an interest in such proceeding, and by careful review, the Agency determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Agency to be for a purpose that is compatible with the purpose for which the Agency collected the records.

15. *Einstein 2 Cyber Security Monitoring*: Records may become accessible to U.S. Department of Homeland Security (DHS) cyber security personnel, if captured in an intrusion detection system used by HHS and DHS pursuant to the Einstein 2 program. Under Einstein 2, DHS uses intrusion detection systems to monitor Internet traffic to and from federal computer networks to prevent malicious computer code from reaching the networks. According to DHS' Privacy Impact Assessment for Einstein 2 (available on the DHS Cybersecurity privacy Web site, <http://www.dhs.gov>), only PII that is directly related to a malicious code security incident is captured by and accessible to DHS, and DHS does not access PII unless the PII is part of the malicious code.

16. Disclosure may be made to the National Archives and Records Administration and/or the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

#### *L. Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System*

##### 1. Storage

Records may be maintained in hard copy files and on computer disks, hard drive, and file servers, and other types of data storage devices.

##### 2. Retrievalability

Records may be retrieved by manual or computer search of the case-tracking system using the name of the respondent(s).

##### 3. Safeguards

*a. Authorized users.* Records in FDA's system are available to the Commissioner of Food and Drugs, the

Agency's Chief Scientist and Deputy Commissioner for Science and Public Health, the Agency's Research Integrity Officer (System Manager), and to other appropriate FDA staff when they have a need for the records in the performance of their duties. Records are also available to the Director of ORI and other appropriate ORI staff, and to other appropriate HHS officials that are involved in the research misconduct proceeding, when there is a need to know in the performance of their duties. All authorized users are informed that the records are confidential and are not to be further disclosed.

*b. Procedural safeguards.* Access is strictly controlled by the Research Integrity Officer (System Manager) in compliance with the Privacy Act and this system notice. Access to the records is limited to ensure confidentiality. All questions and inquiries from any party should be addressed to the Research Integrity Officer (System Manager).

*c. Physical safeguards.* All records (such as diskettes, computer listings, or documents) are kept in a secured area, locked rooms, and locked building. The facility has a 24-hour guard service, and access to the building is further controlled by an operational card key system. Access to the files, which are generally hard copy, is limited to a subset of individuals with general access to the building.

Access to individual offices is controlled by simplex locks. Records are kept in locked file cabinets in a room that is locked during non-working hours. Access to this room is restricted to specific personnel. Access to computer files is strictly limited through passwords and user-invisible encryption. Special measures commensurate with the sensitivity of the record are taken to prevent unauthorized copying or disclosure of the records.

#### *M. Retention and Disposal*

The records are maintained for 7 years in accordance with 42 CFR part 93, FDA's Records Control Schedule, and with the applicable General Records Schedule and disposition schedule approved by the National Archives and Records Administration.

#### *N. System Manager and Address*

FDA Research Integrity Officer, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4214, Silver Spring, MD 20993.

#### *O. Notification Procedure*

In accordance with 21 CFR part 21, subpart D, an individual may find out

whether a record exists about him or her by submitting a written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to: FDA Privacy Act Coordinator, Division of Freedom of Information (ELEM-1029), Food and Drug Administration, 12420 Parklawn Dr., Element Building, Rockville, MD 20857. HHS/FDA is exempting all records related to research misconduct proceedings from this provision (see section I.S of this document *Records Exempted from Certain Provisions of the Privacy Act*). However, consideration will be given to requests addressed to the Privacy Act Coordinator as described previously in this document. In addition, some records may be exempt under 5 U.S.C 552a(d)(5), if they are "compiled in reasonable anticipation of a civil action or proceeding." See also 21 CFR 21.41(e).

#### *P. Record Access Procedures*

Procedures are the same as those in section I.O of this document (*Notification Procedure*). Requests should also reasonably specify the record contents being sought and may also request an accounting of disclosures that have been made of the record, if any. As stated previously in this document, HHS/FDA is exempting all records related to research misconduct proceedings from this provision (see section I.S of this document, *Records Exempted from Certain Provisions of the Privacy Act*), and some records may be exempt under 5 U.S.C. 552a(d)(5). However, consideration will be given to access requests addressed to the Privacy Act Coordinator as described in section I.O of this document (*Notification Procedure*).

#### *Q. Contesting Record Procedures*

In accordance with 21 CFR 21.50, contact the Privacy Act Coordinator, Food and Drug Administration (see **FOR FURTHER INFORMATION CONTACT** or section I.O of this document). Reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. As stated previously in this document, HHS/FDA is exempting all records related to research misconduct proceedings from this provision (see section I.S of this document, *Records Exempted from Certain Provisions of the Privacy Act*), and some records may be exempt under 5 U.S.C. 552a(d)(5).

### R. Record Source Categories

Information in this system is obtained from many sources, including the following: (1) Directly from the respondent or complainant or his/her representative; (2) derived from materials supplied by the respondent or complainant or his/her representative; (3) from information supplied by the institutions, witnesses, scientific publications, and other nongovernmental sources; (4) from nonobservation and analysis made by FDA and ORI staff and scientific experts; (5) from departmental and other Federal, State, and local government records; (6) from hearings and other administrative proceedings; and (7) from any other relevant source.

### S. Records Exempted From Certain Provisions of the Privacy Act

FDA records related to research misconduct proceedings will be exempt from the Privacy Act requirements pertaining to providing an accounting of disclosures, access and amendment, notification, and Agency procedures and rules under sections 552a(k)(2) and (k)(5) of the Privacy Act.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of proposed rulemaking and direct final rule to apply these exemptions to records in this system related to ongoing investigations or that would reveal a confidential source. These exemptions are necessary to safeguard the integrity of the research misconduct proceedings and to ensure that FDA's efforts to obtain accurate and objective information will not be hindered. In the course of investigations of allegations of research misconduct, it is often necessary to give an express promise to withhold the identity of an individual who has provided relevant information. Sources of information necessary to complete an effective investigation may be reluctant to provide sensitive information unless they can be assured that their identities will not be revealed. The proposed exemptions will ensure that the records related to ongoing investigations will not be disclosed inappropriately and that the identities of confidential sources will be protected.

The notice of proposed rulemaking and direct final rule provide additional detail regarding the bases for these exemptions.

## II. Comments

FDA invites comments on all parts of the systems notice. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either

electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 12, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012-20888 Filed 8-27-12; 8:45 am]

**BILLING CODE 4160-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Advisory Commission on Childhood Vaccines, Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following meeting:

*Name:* Advisory Commission on Childhood Vaccines (ACCV).

*Date and Time:* September 06, 2012, 1:00 p.m. to 5:15 p.m. EDT.

*Place:* Parklawn Building (and via audio conference call), Conference Room 10-65, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, September 06 from 1:00 p.m. to 5:15 p.m. (EDT). The public can join the meeting via audio conference call by dialing 1-800-369-3104 on September 06, and providing the following information:

*Leader's Name:* Dr. Geoffrey Evans

*Password:* ACCV

*Agenda:* The agenda items for the September meeting will include, but are not limited to: Updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice (DOJ), National Vaccine Program Office (NVPO), Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health) and Center for Biologics Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV web site (<http://www.hrsa.gov/vaccinecompensation/accv.htm>) prior to the meeting. Agenda items are subject to change as priorities dictate.

*Public Comment:* Persons interested in attending the meeting in person or providing an oral presentation should

submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C-26, 5600 Fishers Lane, Rockville, Maryland 20857 or email: [aherzog@hrsa.gov](mailto:aherzog@hrsa.gov). Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by email, mail, or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as available.

#### FOR FURTHER INFORMATION CONTACT:

Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C-26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443-6593, or email: [aherzog@hrsa.gov](mailto:aherzog@hrsa.gov).

Dated: August 22, 2012.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2012-21093 Filed 8-27-12; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PA-10-271 Investigator Initiated P01.

*Date:* September 18, 2012.

*Time:* 1:00 p.m. to 5:15 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Immunology Review Branch, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-594-3243, haririmf@niaid.nih.gov.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Investigator-Initiated Program Project (P01).

*Date:* September 18, 2012.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Brandt R. Burgess, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-451-2584, bburgess@niaid.nih.gov.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HIVRAD 2012.

*Date:* September 20-21, 2012.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree by Hilton Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Raymond R. Schleef, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, (301) 451-3679, schleefr@niaid.nih.gov.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning and Implementation Grants and Cooperative Agreements.

*Date:* September 20, 2012.

*Time:* 9:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Louis A. Rosenthal, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, 6700B Rockledge Drive, MSC-7616, Bethesda, MD 20892-7616, (301) 496-2550, rosenthall@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 22, 2012.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012-21122 Filed 8-27-12; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in infectious and microbial diseases.

*Date:* September 19-20, 2012.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301-996-5819, zhengli@csr.nih.gov.

*Name of Committee:* Emerging Technologies and Training Neurosciences Integrated Review; Group; Molecular Neurogenetics Study Section.

*Date:* September 27-28, 2012.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

*Contact Person:* Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408-9756, carsteae@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.

*Date:* September 27, 2012.

*Time:* 8 a.m. to 8:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Lynn E Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806-3323, luethkel@csr.nih.gov.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Learning and Memory Study Section.

*Date:* September 28, 2012.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5181 MSC 7846, Bethesda, MD 20892-7846, 301-435-1236, zhaow@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 22, 2012.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012-21123 Filed 8-27-12; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Health Promotion

Among Racial and Ethnic Minority-PA10-236.

*Date:* October 9, 2012.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8894, [begumn@nidDK.nih.gov](mailto:begumn@nidDK.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK KUH Fellowship Grant Applications Review.

*Date:* October 12, 2012.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building Sixty, 9000 Rockville Pike, Room 144, Rockville, MD 20892.

*Contact Person:* Xiaodu Guo, Md, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-4719, [guox@extra.nidDK.nih.gov](mailto:guox@extra.nidDK.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships of Digestive Diseases and Nutrition.

*Date:* October 18-19, 2012.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

*Contact Person:* Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-3993, [tatham@mail.nih.gov](mailto:tatham@mail.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK-C Conflicts.

*Date:* October 18, 2012.

*Time:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

*Contact Person:* Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-3993, [tatham@mail.nih.gov](mailto:tatham@mail.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Nutrition Obesity Research Centers (P30).

*Date:* November 12, 2012.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

*Contact Person:* Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch,

DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-3993, [tatham@mail.nih.gov](mailto:tatham@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 22, 2012.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012-21121 Filed 8-27-12; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Privacy Act of 1974; Proposed Exempt New System of Records

**AGENCY:** National Institutes of Health (NIH), Department of Health and Human Services (DHHS).

**ACTION:** Notification of a proposed exempt new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended (Privacy Act), the National Institutes of Health (NIH) is proposing to establish an exempt new system of records, 09-25-0223, "NIH Records Related to Research Misconduct Proceedings, HHS/NIH." The new system will contain records pertaining to individual respondents who are the subject of research misconduct allegations or proceedings governed by the Public Health Service (PHS) Policies on Research Misconduct ("PHS Policies on Research Misconduct"), 42 CFR Part 93 ("Part 93"). Because this is a law enforcement investigatory system, NIH has published a Notice of Proposed Rulemaking to exempt the system from certain requirements of the Privacy Act; specifically, the provisions pertaining to providing an accounting of disclosures, access and amendment, notification, and agency procedures and rules.

**DATES:** The new system of records will be effective on the date of publication of this notice, with the exception of the routine uses and the requested exemptions. The routine uses will become effective on October 12, 2012. As detailed in the related rulemaking notices published elsewhere in the **Federal Register**, unless revised or withdrawn in response to comments, the requested exemptions will become effective 135 days after publication of the rulemaking notices. Submit either

electronic or written comments regarding this notice by October 12, 2012. The NIH has sent a Report of the Proposed Exempt New System to the Congress and to the Office of Management and Budget (OMB).

**ADDRESSEES:** You may submit comments, identified by the Privacy Act System of Records Number (Ex. 09-25-0223), by any of the following methods:

- Federal eRulemaking Portal: <http://regulations.gov>. Follow the instructions for submitting comments.
- Email: [plak@mail.nih.gov](mailto:plak@mail.nih.gov) and include PA SOR number (Ex. 09-25-0223) in the subject line of the message.
- Phone: (301) 402-6201 (not a toll-free number).
- Fax: (301) 402-0169.
- Mail: NIH Privacy Act Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, Maryland 20892.

- Hand Delivery/Courier: 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, Maryland 20892.

Comments received will be available for inspection and copying at this same address from 9:00 a.m. to 3:00 p.m., Monday through Friday, Federal holidays excepted.

**FOR FURTHER INFORMATION, CONTACT:** NIH Privacy Act Officer, Office of Management Assessment (OMA), Office of the Director (OD), National Institutes of Health (NIH), 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, Maryland 20892, or telephone (301) 402-6201 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** NIH is establishing the "NIH Records Related to Research Misconduct Proceedings" system. The new system will be used by NIH to ensure that research misconduct proceedings are carried out in accordance with the NIH Intramural Research Program Policies and Procedures for Research Misconduct Proceedings ("NIH Policy"), 42 CFR Part 93, and other applicable Federal statutes and regulations; enable NIH to inform Institute/Center (IC), NIH, Office of Research Integrity (ORI), Public Health Service (PHS), and Department of Health and Human Services (DHHS) agency officials who have a need for the records in the performance of their duties, of the status and results of research misconduct proceedings; and enable NIH to notify, consult with, and provide assistance to other Federal, State, local, or Tribal government agencies to permit them to take action to protect the health and safety of the public, to promote the integrity of NIH- and PHS-supported research, to

conserve public funds, or to pursue potential violations of civil and criminal statutes. The system is more thoroughly detailed below and in an associated rulemaking document that outlines the exemptions proposed for the system and the reasons for exempting the system from certain provisions of the Privacy Act.

Dated: June 29, 2012.

**Colleen Barros,**

*Deputy Director for Management, National Institutes of Health.*

**SYSTEM NUMBER:**

09–25–0223

**SYSTEM NAME:**

NIH Records Related to Research Misconduct Proceedings, HHS/NIH

**SECURITY CLASSIFICATION:**

Unclassified

**SYSTEM LOCATION:**

This system of records will be located in National Institutes of Health (NIH) facilities and/or in the facilities of contractors and/or other affiliates working on behalf of NIH. Specific location:

Office of Intramural Research (OIR), National Institutes of Health (NIH), 9000 Rockville Pike, Bethesda, Maryland 20892.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system will contain records about individuals who are the subject of research misconduct allegations or proceedings, referred to as “respondents.” The Public Health Service (PHS) Policies on Research Misconduct (“PHS Policies on Research Misconduct”), 42 CFR Part 93 (“Part 93”), define the term “respondent” to mean “the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.” 42 CFR 93.225. This definition has also been incorporated into the NIH Intramural Research Program Policies & Procedures for Research Misconduct Proceedings (“NIH Policy”). Other individuals who may be involved in research misconduct allegations or proceedings (e.g., complainants, witnesses) are not record subjects for purposes of this system.

Consistent with the NIH’s responsibilities under Part 93 and the NIH Policy, this system notice applies to alleged or actual research misconduct (fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results) involving research: (1) Carried

out in NIH facilities by any person; (2) funded by the NIH Intramural Research Program (IRP) in any location; or (3) undertaken by an NIH employee or trainee as part of his or her official NIH duties or NIH training activities, regardless of location. A person who, at the time of the alleged or actual research misconduct, was employed by, was an agent of, or was affiliated by contract, agreement, or other arrangement with NIH, is subject to the NIH Policy and covered by this system if, for example, he or she is involved in: (1) NIH- or PHS-supported biomedical or behavioral research; (2) NIH- or PHS-supported biomedical or behavioral research training programs; (3) NIH- or PHS-supported activities that are related to biomedical or behavioral research or research training, such as the operation of tissue and data banks and the dissemination of research information; (4) plagiarism of research records produced in the course of NIH- or PHS-supported research, research training or activities related to that research or research training; or (5) an application or proposal for NIH or PHS support for biomedical or behavioral research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information (regardless of whether it is approved or funded).

The term “research misconduct” is defined to mean “fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.” “Fabrication” is defined to mean “making up data or results and recording or reporting them.” “Falsification” is “manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.” “Plagiarism” is “the appropriation of another person’s ideas, processes, results, or words without giving appropriate credit.” Research misconduct does not include honest error or differences of opinion. 42 CFR 93.103.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains records related to research misconduct proceedings. The term “research misconduct proceeding” is defined in Part 93 and the NIH Policy to mean “any actions related to alleged research misconduct,” including, but not limited to, allegation assessments, inquiries, investigations, oversight reviews by the Office of Research Integrity (ORI) of the U.S. Department of Health and Human

Services (DHHS, HHS or Department), hearings, and administrative appeals.

The records include all information that NIH receives or generates in overseeing or conducting research misconduct proceedings, including the implementation of research misconduct findings, and all information that NIH submits to, or receives from, ORI or other institutions under Part 93. This information includes, but is not necessarily limited to information about respondents (this may include social security numbers), complainants, and witnesses; the nature of the allegations; the NIH or PHS funding involved, including grant numbers; the offices, Institutes, Centers, and officials responsible for conducting the actions that are part of the research misconduct proceeding; the documentation used in the assessment, inquiry, and investigation, including relevant research data and materials, applications, proposals and documentation related to review and award actions, reports, abstracts, manuscripts and publications by the respondent(s) and other relevant reports, abstracts, manuscripts and publications; correspondence; memoranda of telephone calls, summaries of interviews and transcripts or recordings of interviews; statistical, scientific, and forensic analyses; interim and final reports; and records of findings, administrative actions, and appeal proceedings, if any.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The legal authorities to operate and maintain this Privacy Act records system are Sections 301, 401, 402, and 405 of the Public Health Service Act (42 U.S.C. 241, 281, 282, and 284); 5 U.S.C. 301; 44 U.S.C. 3101; and 42 CFR part 93.

**PURPOSE(S):**

NIH personnel and any contractors assisting them will use information from this system, on a need-to-know basis, for the following purposes:

1. To enable NIH and its Institutes and Centers (“ICs”) to protect the health and safety of the public, to promote the integrity of NIH- or PHS-supported research, and to conserve public funds;
2. To enable NIH to discharge effectively its responsibilities in managing the NIH intramural research program and in the award and administration of research and training grants, cooperative agreements, and contracts;
3. To ensure that research misconduct proceedings are carried out in accordance with the NIH Policy, 42 CFR Part 93, and other applicable Federal statutes and regulations;

4. To enable NIH to inform other IC, NIH, ORI, PHS, and other HHS agency officials who have a need for the records in the performance of their duties, of the status and results of research misconduct proceedings; and

5. To enable NIH to notify, consult with, and provide assistance to other Federal, State, local, or Tribal governmental agencies to permit them to take action to protect the health and safety of the public, to promote the integrity of NIH- and PHS-supported research, to conserve public funds, or to pursue potential violations of civil and criminal statutes.

**ROUTINE USES DISCLOSURES MADE OUTSIDE OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS OR DEPARTMENT) OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

A "routine use" is defined in 45 CRF 5b.1(j) to mean "the disclosure of a record outside the Department, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected." The routine uses for which NIH will disclose information from this system of records are as follows:

1. Disclosure may be made to any person able to obtain information or provide information or assistance in a research misconduct proceeding or related proceeding. Recipients of disclosures under this routine use may include: Experts asked to perform statistical, forensic or other analyses or otherwise to provide assistance; institutions with which the respondent(s) was previously or is currently affiliated; Federal, State, local, and Tribal governmental agencies; the respondent(s); the complainant(s); witnesses; and organizations or individuals acting on behalf of those institutions, agencies, and individuals; provided, however, in each case NIH determines whether limited disclosures, confidentiality statements, contractual commitments to comply with the requirements of the Privacy Act of 1974, or similar measures are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects, or others who may be identified in the records to be disclosed.

2. Disclosure may be made to NIH/DHHS guest researchers, special government employees (SGEs), trainees, volunteers, former employees, contractors, and other persons engaged to perform a service in support of NIH/DHHS related to this system of records, if such persons need access to the records to perform their assigned task; provided, however, in each case NIH/

DHHS determines whether limited disclosures, confidentiality statements, contractual commitments to comply with the requirements of the Privacy Act of 1974, or similar measures are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects, or others who may be identified in the records to be disclosed; and NIH/DHHS determines that the disclosure is for a purpose compatible with the purpose for which the agency collected the records.

3. Disclosure may be made to other Federal, State, local, or Tribal governmental agencies and offices, if NIH has reason to believe that a research misconduct proceeding may involve that agency or office.

4. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, disclosure may be made to the appropriate governmental agency, whether Federal, State, local or Tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation, if the information disclosed is relevant to the responsibilities of the agency or public authority.

5. Disclosure may be made to Institutional Review Boards, research-sponsoring institutions, and individual research subjects, regarding information obtained or developed through a research misconduct proceeding that, in NIH's judgment, may have implications for individuals' health or for their participation in a research study.

6. After NIH makes a finding of research misconduct and has informed ORI of the finding, disclosure may be made to responsible officials of NIH- or PHS-supported institutions or organizations, when in connection with a research misconduct proceeding concerning an individual previously or currently employed by, or affiliated with the institution or organization, or when NIH, ORI, or HHS makes a finding or takes an action potentially affecting the institution or organization or its NIH or PHS support for research, research training, or related activities.

7. A record from this system may be disclosed to a Federal, State, local, or Tribal governmental agency maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the employment, clearance, suitability, eligibility or retention of an employee or other personnel action, the retention of a security clearance, the letting of a

contract, issuance of a benefit or qualification decision made by HHS or NIH. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No information will be released that would reveal a confidential source.

8. After NIH makes a finding of research misconduct and has informed ORI of the finding, disclosure may be made to research collaborators of the respondent, professional journals, other publications, news media, professional societies, other individuals and entities, and the public concerning research misconduct findings and the need to correct or retract research results or reports that have been affected by research misconduct, unless NIH determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy. No information will be released that would reveal a confidential source.

9. After NIH makes a finding of research misconduct and has informed ORI of the finding, disclosure may be made to a State or other professional licensing board, certifying body, or other similar entity authorized to conduct a review of the respondent, to aid the entity in meeting its responsibility to protect the health of the population in its jurisdiction or the integrity of the profession.

10. After NIH concludes a research misconduct proceeding without a finding of research misconduct or a settlement, disclosure may be made to the respondent, the complainant, witnesses, or other persons involved in or aware of the research misconduct proceeding; provided, however, in each case NIH determines whether limited disclosures, confidentiality statements, contractual commitments to comply with the requirements of the Privacy Act of 1974, or similar measures are needed to protect the privacy of respondent(s), complainant(s), witnesses, research subjects, or others who may be identified in the records to be disclosed.

11. Disclosure may be made to the Department of Justice (DOJ), a court, or other tribunal, when: (a) The agency or any component thereof; (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity

where the DOJ has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation and, by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, a court, or other tribunal is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

12. A record may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, if the information disclosed is relevant and necessary for that assistance.

13. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made pursuant to the written request of the individual and if disclosure does not compromise the law enforcement activities of the Office of Research Integrity or other government agency.

14. NIH may disclose information to the National Archives and Records Administration (NARA), General Services Administration (GSA), or other Federal government agencies pursuant to records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

15. Records may become accessible to U.S. Department of Homeland Security (DHS) cyber security personnel, if captured in an intrusion detection system used by HHS and DHS pursuant to the Einstein 2 program. Under Einstein 2, DHS uses intrusion detection systems to monitor Internet traffic to and from federal computer networks to prevent malicious computer code from reaching the networks. According to DHS' Privacy Impact Assessment for Einstein 2 (available on the DHS Cybersecurity privacy Web site, [http://www.dhs.gov/files/publications/editorial\\_0514.shtm#4](http://www.dhs.gov/files/publications/editorial_0514.shtm#4)), only personally identifiable information (PII) that is directly related to a malicious code security incident is captured by and accessible to DHS, and DHS does not access PII unless the PII is part of the malicious code.

NIH may also disclose information from this system as authorized directly in the Privacy Act at 5 U.S.C. 552a(b).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records will be stored in various electronic media and paper form, and maintained under secure conditions in limited access areas or with controlled access. Only authorized users whose official duties require the use of this information will have regular access to the records in this system.

In accordance with established NIH, HHS and other Federal security policies and controls, records may also be located, maintained and accessed from secure servers whenever feasible or located on portable/mobile devices including, but not limited to: Laptops, PDAs, USB drives, portable hard drives, Blackberrys, iPods, CDs, DVDs, electronic readers, and/or other portable/mobile storage devices. Records are maintained on portable/mobile storage devices only for valid, business purposes, with prior approval, and in accordance with all applicable NIH, HHS and Federal security requirements, policies and controls.

**RETRIEVABILITY:**

Records will be retrieved by manual or computer search using a unique case number or the name of the respondent(s) (i.e., the individual or individuals who are the subject of an allegation of research misconduct or of a research misconduct proceeding).

**SAFEGUARDS:**

Measures to prevent unauthorized disclosures are implemented as appropriate for each location or form of storage and for the types of records maintained. Site(s) implement personnel and procedural safeguards such as the following:

*Authorized Users:*

Access is strictly limited to ensure least privilege by authorized personnel whose duties require such access (i.e., valid, business need-to-know). Records from this system are available to the System Manager, to the Director, NIH, and to other appropriate NIH staff when they have a need for the records in the performance of their duties. Records are also available to the Director, ORI, and to other appropriate HHS officials, including attorneys in the Office of the General Counsel, when there is a need to know in the performance of their duties. All authorized users are informed that the records are confidential and are not to be further disclosed.

*Physical Safeguards:*

Controls to secure the data and protect paper and electronic records,

buildings, and related infrastructure against threats associated with their physical environment include, but are not limited to the use of the HHS Employee ID and/or badge number and NIH key cards and security guards. Paper records are secured in locked file cabinets, offices and facilities. Electronic media are kept on secure servers or computer systems. Data on computer files is accessed by a password known only to authorized users who have a need for the data in the performance of their duties as determined by the System Manager. During regular business hours, rooms in this restricted area are unlocked but entry is controlled by on-site personnel. Security guards perform random checks on the physical security of the storage locations after duty hours, including weekends and holidays. The NIH main campus in Bethesda, Maryland is protected by perimeter barriers and limited points of access, security personnel, and intrusion alarms. Electronic access to computer files is strictly limited through passwords and user-invisible encryption. Special measures commensurate with the sensitivity of the record are taken to prevent unauthorized copying or disclosure of the records. Individually identifiable records are kept in locked file cabinets or in rooms under the direct control of the System Manager. Contractor interaction with records covered by this system will occur on-site and no physical records (paper or electronic) will be allowed to be removed from the NIH Office of Intramural Research unless authorized. All authorized users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area/office.

*Administrative Safeguards:*

Controls to ensure proper protection of information and information technology systems include, but are not limited to the completion of a Certification and Accreditation (C&A) package and a Privacy Impact Assessment (PIA) for associated information technology systems, a system security plan, a contingency or back-up plan, user manuals, and mandatory completion of annual NIH Information Security and Privacy Awareness training. All authorized users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised area/office. When the design, development, or

operation of a system of records on individuals is required to accomplish an agency function, the applicable Privacy Act Federal Acquisition Regulation (FAR) clauses are inserted in solicitations and contracts.

*Technical Safeguards:*

Controls are generally executed by the computer system and are employed to minimize the possibility of unauthorized access, use, or dissemination of the data in the system. They include, but are not limited to user identification, password protection, firewalls, virtual private network, encryption, intrusion detection system, common access cards, smart cards, biometrics and public key infrastructure.

*Implementation Guidelines:* This Privacy Act System of Records Notice conforms to and complies with Office of Management and Budget (OMB) Circular A-130—Appendix I “Federal Agency Responsibilities for Maintaining Records about Individuals” <http://www.whitehouse.gov/omb/assets/omb/circulars/a130/a130trans4.pdf>, standards outlined in the Health and Human Services (HHS) General Administration Manual (GAM), HHS Chapter 45-10 “Privacy Act—Basic Requirements and Relationships” <http://www.hhs.gov/hhsmanuals/gam/chapters/45-10.pdf>, HHS Chapter 45-12 “Creation, Alteration, and Termination of Privacy Act Systems of Records and Associated Documentation” (available in paper copy only), HHS Chapter 45-13, “Safeguarding Records Contained in Systems of Records” <http://www.hhs.gov/hhsmanuals/gam/chapters/45-13.pdf>, and HHS Information Security and Privacy Program Policy.

*Alleged or Confirmed Security Incidents:* NIH will report and take action to remediate security incidents involving the disclosure of personally identifiable information according to law, regulations, OMB guidance, HHS and NIH policies.

**RETENTION AND DISPOSAL:**

Records will be maintained for 7 years in accordance with 42 CFR Part 93 and retained and disposed of under the authority of the NIH Records Control Schedule contained in Manual Chapter 1743, “Keeping and Destroying Records”, Appendix 1, item 1700-A-3. Refer to the NIH Manual Chapter for specific retention and disposition instructions: <http://www1.od.nih.gov/oma/manualchapters/management/1743>.

**SYSTEM MANAGER AND ADDRESS:**

The agency official responsible for the system policies and practices outlined above is:

NIH Agency Intramural Research Integrity Officer (AIRIO), Office of Intramural Research (OIR), National Institutes of Health (NIH), 9000 Rockville Pike, Bethesda, Maryland 20892.

**NOTIFICATION PROCEDURE:**

This system will be exempt from the Privacy Act provision requiring procedures for notifying an individual, upon his or her request, if the system contains a record about him or her. However, consideration will be given to requests addressed to the System Manager listed above. Any individual who wishes to know if this system contains a record about him or her may make a written request to the System Manager.

**RECORD ACCESS PROCEDURE:**

This system will be exempt from access. However, because the access exemption is limited and discretionary, consideration will be given to access requests addressed to the System Manager. The requester must verify his or her identity by providing either a notarization of the request or a written certification that he or she is who he or she claims to be and understands that the knowing and willful request of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a fine of up to five thousand dollars. If records are requested on behalf of a minor or legally incapacitated person, a statement of guardianship/conservatorship must be included. Requesters should also reasonably specify the record contents being sought. Requests should include (a) full name, (b) address, (c) the approximate date(s) the information was collected, (d) the types of information collected, and (e) the office or official responsible for the collection of information, etc. Individuals may also request an accounting of disclosures that have been made of their records, if any, if the System Manager determines that disclosure would not compromise the law enforcement activities of the NIH Office of Intramural Research. (These access procedures are in accordance with Department regulation (45 CFR 5b.5(a)(2)).

**CONTESTING RECORD PROCEDURE (REDRESS):**

This system will be exempt from redress. However, records that contain factually incorrect information may be amended. To contest such information, write to the System Manager at the

address specified above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reason(s) for requesting the correction, along with supporting information. The right to contest records is limited to information which is factually inaccurate, incomplete, irrelevant, or untimely (obsolete).

**RECORD SOURCE CATEGORIES:**

Information in this system is received or obtained from many sources, including: (1) Directly from the complainant or respondent or his/her representative; (2) derived from materials supplied by the complainant or respondent or his/her representative; (3) from information supplied by institutions, witnesses, scientific publications or other nongovernmental sources; (4) from observation and analysis made by NIH staff, guest researchers, SGEs, trainees, volunteers, former employees, contractors, and other persons engaged to perform a service in support of NIH; (5) departmental and other Federal, State, local, and Tribal government records; (6) from hearings and other administrative proceedings; and (7) from any other relevant source.

**EXEMPTIONS CLAIMED FOR THIS SYSTEM:**

Pursuant to 5 U.S.C. 552a (k)(2) and (k)(5) of the Privacy Act, the system will be exempted from the Privacy Act requirements pertaining to providing an accounting of disclosures, access and amendment, notification, and agency procedures and rules (5 U.S.C. 552a (c)(3), (d)(1)–(4), (e)(4)(G)–(H), and (f)). NIH believes that these exemptions are necessary to maintain the integrity of the research misconduct proceedings and to ensure that the NIH's efforts to obtain accurate and objective information will not be hindered. However, any individual who has been denied any right, privilege, or benefit to which he or she otherwise would have been entitled as a result of the maintenance of such material will be given access to the material, unless disclosure of the material would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality.

[FR Doc. 2012-20884 Filed 8-27-12; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Announcement of Test Providing Centralized Decision-Making Authority for Four CBP Centers of Excellence and Expertise

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document announces U.S. Customs and Border Protection's (CBP's) plan to conduct a general test to further develop the Centers of Excellence and Expertise (CEEs) to facilitate the entry of merchandise imported by companies within certain industries. This document involves testing how the following four CEEs will operate with broad decision-making authority: the Electronics CEE; Pharmaceuticals, Health & Chemicals CEE; the Automotive & Aerospace CEE; and the Petroleum, Natural Gas & Minerals CEE. This notice invites public comment concerning the methodology of the test program, identifies the purpose of the test and the regulations that will be affected, determines the length of the test, explains the application process, and provides the eligibility and selection criteria for voluntary participation in the test. This document also provides the legal authority for the test and explains the repercussions and appeals process for misconduct under the test.

**DATES:** Applications for participation in the test may be submitted beginning August 28, 2012. The selection of initial test participants will begin no later than September 27, 2012. Applications will be accepted throughout the duration of this test. Selected applicants will be individually notified of their participation date.

**ADDRESSES:** To submit comments concerning this test program: send an email to [CEE@cbp.dhs.gov](mailto:CEE@cbp.dhs.gov). In the subject line of an email, please use, "Comment on CEE test." To apply to participate: submit a letter to U.S. Customs and Border Protection, Office of Field Operations, Trade Operations Division, 1300 Pennsylvania Ave., NW., Suite 2.3D, Washington, DC 20229, or an email to [CEE@cbp.dhs.gov](mailto:CEE@cbp.dhs.gov). The letter or email must include the name and contact information for the business interested in participating in the test, the business's industry, and the business's importer of record (IOR) number(s).

**FOR FURTHER INFORMATION CONTACT:** Lori Whitehurst, Program Manager, Office of Field Operations, at (202) 344-2536; or Thomas Overacker, Project Coordinator, Office of International Trade at (859) 331-9020 ext. 137.

#### SUPPLEMENTARY INFORMATION:

##### Background

In October 2011, U.S. Customs and Border Protection (CBP) established two Centers of Excellence and Expertise (CEEs): The Electronics CEE in Long Beach, California and the Pharmaceuticals CEE in New York City, New York. Since their initiation in October 2011, the CEEs have been staffed with CBP employees who facilitate trade by providing account management for Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA) members in the identified industries, and engaging in risk segmentation and trade outreach. The CEEs have the ability to review entries and the CEE Directors, who are tasked with leading the CEEs, may make entry processing recommendations to the Port Directors concerning pharmaceutical and electronics entries. The Electronics CEE specializes in merchandise related to information technology, integrated circuits, automated data processing equipment, and consumer electronics. The Pharmaceuticals CEE will now be called the *Pharmaceuticals, Health & Chemicals CEE*, and will specialize in merchandise related to pharmaceuticals, health-related equipment, and products of the chemical and allied industries.

On May 10, 2012, the Acting Commissioner of CBP announced at the West Coast Trade Symposium two new CEEs: The Automotive & Aerospace CEE in Detroit, Michigan, and the Petroleum, Natural Gas & Minerals CEE in Houston, Texas. The Automotive & Aerospace CEE will specialize in merchandise related to the automotive, aerospace, or other transportation equipment and related parts industries. The Petroleum, Natural Gas & Minerals CEE will specialize in merchandise related to the petroleum, natural gas, petroleum related, minerals, or mining industries.

This document announces a general test to provide broad decision-making authority to the: Electronics CEE; Pharmaceuticals, Health & Chemicals CEE; Automotive & Aerospace CEE; and Petroleum, Natural Gas & Minerals CEE. Specifically, the test waives certain regulations to the extent that they provide Port Directors with the authority to make certain decisions. Those regulations are waived only to the extent to allow the CEE Directors for the

four identified CEEs to make those decisions.

This document identifies the purpose of the test and the regulations that will be affected, determines the length of the test, explains the application process, and provides the eligibility and selection criteria for voluntary participation in the test. This document also provides the legal authority for the test and explains the repercussions and appeals process for misconduct under the test.

##### Purpose of the Test and Suspension of Certain Regulations

CBP's goal is to incrementally transition the operational trade functions that traditionally reside with the ports of entry until they reside entirely with the CEEs. By focusing on industry-specific issues and providing tailored support for the participating importers, CBP is seeking to facilitate trade, to reduce transaction costs, increase compliance with applicable import laws, and to achieve uniformity of treatment at the ports of entry for the identified industries. CBP believes that providing broad decision-making authority to the CEEs for entry processing issues will better enable the CEEs to achieve these goals for CBP and the trade.

Currently, pursuant to the CBP regulations in title 19 of the Code of Federal Regulations (19 CFR), Port Directors have the authority to make decisions regarding products imported into the ports. For this test, regulations in the following sections of title 19 of the CFR (19 CFR) providing Port Directors with certain decision-making authority will be waived only to the extent to provide the CEE Directors with the authority to make those decisions: §§ 10.1, 10.8, 10.9, 10.21, 10.24, 10.66, 10.67, 10.84, 10.91, 10.102, 10.134, 10.172-10.175, 10.177, Subparts B-K, M, N, and P of Part 10, §§ 12.3, 12.73(j) and (k), 12.80, 12.121(a)(2)(ii); Part 113; §§ 134.3, 134.25, 134.26, 134.34, 134.51, 134.52, 134.53, 134.54 (a)<sup>1</sup>, 141.20, 141.35, 141.38, 141.44, 141.45, 141.46, 141.57, 141.58, 141.88, 141.91, 141.92, 141.113, 142.13, 144.12, 144.34(a), 144.38, 144.41, 146.63, 151.11, 152.2, 152.13, 152.101, 159.7, 159.12, 159.58, 162.79b, 163.7, 173.1, 173.2, 173.4, 173.4a, 174.12, 174.15, 174.16, 174.21,

<sup>1</sup> Please note that 19 CFR 134.54(a) will be waived only to the extent to provide the CEE Directors with the authority to extend the number of days from the date of the notice of redelivery for the importer to properly mark or redeliver all merchandise previously released to him. The Port Director will continue to retain the authority for demanding liquidated damages incurred under the bond in an amount equal to the entered value of the articles not properly marked or redelivered.

174.22, 174.23, 174.24, 174.26, 174.27, 174.29, 174.30, 181.12, 181.13, 181.22, 181.23, 181.32, 181.33, 181.64, 181.112, 181.113, 181.114, 181.115, 181.116, 181.121, and 191.61.

When test participants file an entry in a port, the required entry documents will be routed to the CEE assigned to that importer and certain revenue-related functions, including but not limited to those indicated below, will be performed by the applicable CEE Director instead of the Port Director:

- Determinations, notifications, and processing concerning duty refund claims based on 19 U.S.C. 1520(d) (*see* 19 CFR 10.441, 10.442, 10.591, 10.592, 181.33, 10.870, and 10.871);
- Requests for computed value information (*see* 19 CFR 141.88);
- Waivers of invoice requirements (*see* 19 CFR 141.92);
- Determinations concerning the time of submission for all entry summaries and estimated duties (*see* 19 CFR 142.13);
- Issuances of all Requests for Information (CBP Form 28) (*see* 19 CFR 151.11);
- Issuances of all Notices of Action (CBP Form 29) (*see* 19 CFR 152.2);
- Notifications and processing concerning any commingling of merchandise (*see* 19 CFR 152.13);
- Processing of requests for application of the computed value method (*see* 19 CFR 152.101);
- Extensions and suspensions of liquidations (*see* 19 CFR 159.12);
- Reviewing and correcting for errors in transactions (*see* 19 CFR 173.1); and
- Reviewing and acting on protests (*see* 19 CFR 173.2, 174.21, and 174.29).

For this test, § 162.74(e)(1) is also waived insofar as test participants will be required to file any prior disclosures with their designated CEE rather than at the port of entry.

#### **CEE Determinations Not Requiring Regulatory Suspension**

The following determinations do not require the waiver of regulations, but are determinations that would usually otherwise be made by the Port Directors, and will be made by the CEE Directors under this test: performing all validation activities; reviewing and processing of post entry amendments and post summary corrections; and fixing the final appraisement of merchandise, and fixing the classification and duty rate of such merchandise.

#### **Processes That Will Change for Selected Test Participants**

The following is a list of processes that will change for test participants effective upon the beginning of this test:

- Requests for entry cancellations must be submitted electronically to the CEE;
- Census resolution processes will be handled by the CEE, therefore, rejected ACS entry summaries must be electronically transmitted to the CEE's email address, unless other arrangements have been made with the CEE to resolve Census issues;
- Timely responses to Requests for Information (CBP Form 28) and Notices of Action (CBP Form 29) must be sent directly to the CEE;
- Requests for Internal Advice must be submitted electronically to the CEE for further coordination with the Office of International Trade, Regulations and Rulings; and
- Protests must be filed via the electronic protest module in ACS (including a note in the filing that designates the CEE team), or, submitted electronically on a scanned copy of the CBP Form 19 with all supporting documents to the CEE via the ACE Portal or the CEE's email address.

#### **Processes That Will Remain Unchanged For Selected Test Participants**

Unless specified in this document or in the "Centers of Excellence and Expertise Test Guidelines" (CEE Test Guidelines), which will be posted on the web at [http://www.cbp.gov/xp/cgov/trade/trade\\_transformation/industry\\_int/](http://www.cbp.gov/xp/cgov/trade/trade_transformation/industry_int/), all current processes will remain unchanged. For example, the following processes will remain unchanged:

- Quota entry summaries will continue to be processed by the ports of entry;
- The bulletin notice of liquidation (CBP Form 4333) will continue to be posted at the ports of entry;
- Revenue collection and the resolution of discrepancies in the amount of monies presented will remain with the ports of entry;
- Requests for further review and requests to void the denial of the protests will continue to be issued by Regulations and Rulings, Office of International Trade;
- Entry filers must continue to file Electronic Invoice Program (EIP) and Remote Location Filing (RLF) entry summaries as usual in the Automated Commercial Environment (ACE); and
- Entry filers must continue to submit entry summaries through the Automated Commercial System (ACS) or ACE and will not be required to change the respective port of entry.

#### **CEE Test Guidelines and Scope of the CEEs' Broad Decision-Making Authority**

All of the regulations cited above that require waiving to provide the CEE Directors with authority to make decisions that are otherwise designated for the Port Director will be waived at the start of the test, with the exception of §§ 159.7 and 191.61, which will be waived on a date that will be indicated in the CEE Test Guidelines. CBP will be posting the CEE Test Guidelines on the web to provide information regarding CEE operations. Test participants must check the CEE Test Guidelines on a weekly basis to determine: (1) How their responsibilities and required processes will differ from non-CEE participants and the effective date of the new responsibility or required processes; (2) whether the new responsibilities and required processes are being changed again and the effective date of the change; (3) whether there will be a change to any procedure that is required by CBP in a manner otherwise than by regulation, e.g., reconciliation test notice; and (4) when §§ 159.7 and 191.61 will be waived.

All changes to procedures during the test will be posted in the CEE Test Guidelines two weeks before the change goes into effect.

The broad decision-making authority provided to the CEEs and the new processes for entry filers will apply only to participants in the test. Port Directors will continue to make these decisions for all other importers. Decisions made by a CEE which are within the authority granted under this test shall govern the transactions to which they pertain; test participants may not seek to have such decisions referred to a Port Director or another CEE Director. For efficiency and trade facilitation, all consumption entries filed before and during participation in the test, except for antidumping and countervailing duty entries, will be processed by the designated CEE, regardless of the commodity listed on the entry line. These entries will continue to be processed by the CEE, even if the test participant voluntarily withdraws from the test. Similarly, regardless of whether a protestable decision was made by a Port Director or a CEE Director, any protests filed after participation in the test commences will be processed and decided upon by the CEE Director. The processing and decision-making authority for these protests will remain with the CEE Director, even if the test participant voluntarily withdraws from the test.

### Timeline for Test

This test is intended to last three years from October 12, 2012. At the conclusion of the test, an evaluation will be conducted to assess the effect that providing CEEs with broad decision-making authority has on improving trade facilitation, lowering transaction costs for importers, and ensuring importers' compliance with applicable import laws and CBP uniformity of actions. CBP plans to publish a notice when the test closes.

### Application Process

Importers of the products defined in the "Eligibility Criteria for Voluntary Participation" section of the document, that meet the eligibility criteria indicated in that section, and wish to participate must submit a letter to U.S. Customs and Border Protection, Office of Field Operations, Trade Operations Division, 1300 Pennsylvania Ave., NW., Suite 2.3D, Washington, DC 20229, or an email to [CEE@cbp.dhs.gov](mailto:CEE@cbp.dhs.gov). The letter or email must include the name and contact information for the business interested in participating in the test, the business's industry, and the business's importer of record (IOR) number(s). Only businesses that meet the eligibility criteria provided in this document are invited to apply for participation. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified and given the opportunity to resubmit. CBP may contact applicants with regard to any additional information that may be needed.

Test participants will be required to update their designated CEE with any added IOR numbers during the course of the test.

All C-TPAT and ISA members currently participating in the existing CEEs will also need to apply for the test if they wish to participate in this test.

Additional participants may join throughout the duration of the test by following the procedures above.

### Eligibility Criteria for Voluntary Participants

For inclusion in the Electronics CEE, applicants must be part of the electronics industry, with the highest percentage of their entries comprised of related merchandise. For the purposes of this test "electronics" includes merchandise classified under headings 3818, 8471, 8473, 8501 through 8504, 8517 through 8538, and 8540 through 8548 of the Harmonized Tariff Schedule of the United States (HTSUS).

For inclusion in the Pharmaceuticals, Health & Chemicals CEE, applicants

must be part of the pharmaceuticals, health, or chemical and allied industries, with the highest percentage of their entries comprised of related merchandise. For purposes of this test, "pharmaceuticals" includes merchandise classified under headings 2936, 2937, 2939, 2941, 3001 through 3006, HTSUS. For purposes of this test, "health equipment" includes merchandise classified under headings 4014, 9018, 9019, 9021, 9022, and 9402, HTSUS. For purposes of this test, "chemicals" includes merchandise classified under headings 2801 through 2935, 2938, 2940, 2942, 3101 through 3302, 3402 through 3405, 3407 through 3604, 3606 through 3817, and 3819 through 3825, HTSUS.

For inclusion in the Automotive & Aerospace CEE, applicants must be part of the automotive, aerospace, or other transportation equipment and related parts industries, with the highest percentage of their entries comprised of related merchandise. For purposes of this test, "automotive" includes merchandise classified under headings 8701 through 8711, 8713, 8714, and 8716, HTSUS. For the purposes of this test, "aerospace" includes merchandise classified under headings 8801 through 8805, HTSUS. For the purposes of the test "other transportation equipment and related parts" includes but is not limited to merchandise classified under headings 4011 through 4013, 8406 through 8412, 8512, 8601 through 8609, 8901 through 8908, HTSUS.

For inclusion in the Petroleum, Natural Gas & Minerals CEE, applicants must be part of the petroleum, natural gas, petroleum related, minerals, or mining industries, with the highest percentage of their entries comprised of related merchandise. For purposes of this test, "petroleum" and "natural gas" include merchandise classified under headings 2709 through 2713, HTSUS. For the purposes of this test, "petroleum related" includes merchandise classified under headings 2701, 2705, 2707, 2708, 2714, 2715 and 2716, HTSUS. For the purposes of this test, "minerals" or "mining" include merchandise classified under headings 2501 through 2621, 2702, 2703, 2704, and 2706, HTSUS.

Participants in any CEE must also have an ACE portal account.

### Selection Criteria for Voluntary Participants

Importers that meet the criteria above may be selected for inclusion in the test. In the initial phase of the test priority consideration for participation will be given to importers enrolled in the C-TPAT Program as Tier 2 or Tier 3

members, and members of the Importer Self-Assessment (ISA) Program. CBP will notify the selected applicants in writing of their selection, their designated CEE, and the starting date of their participation. Selected participants may have different starting dates.

### Legal Authority for General Testing

Section 101.9(a) of the CBP regulations (19 CFR 101.9(a)) allows CBP to conduct a test program or procedure to evaluate the effectiveness of operational procedures regarding the processing of passengers, vessels, or merchandise by imposing requirements different from those specified in the CBP regulations but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. This test is established pursuant to 19 CFR 101.9(a) to test the effectiveness of new operational procedures. Revenue collection will continue to be handled electronically through the Automated Clearing House (ACH) and by the ports of entry and the test will not affect public health, safety, or law enforcement.

### Misconduct Under the Test

A CEE test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or discontinuance from participation in this test for any of the following:

- Failure to follow the terms and conditions of this test.
- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations that have not been waived.
- Failure to deposit duties or fees in a timely manner.

If the CEE Director finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the CEE Director's decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to U.S. Customs and Border Protection, Office of Field Operations, Cargo and Conveyance Security (CCS) Division, 1300 Pennsylvania Ave., NW., Suite 2.3D, Washington, DC 20229 or by email to [CEE@cbp.dhs.gov](mailto:CEE@cbp.dhs.gov). The Executive Director, Cargo and Conveyance Security, Office of Field Operations (OFO), CBP Headquarters, will issue a

decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's participation privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the CEE Director may immediately discontinue the test participant's participation privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the CEE Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to U.S. Customs and Border Protection, Office of Field Operations, CCS Division, 1300 Pennsylvania Ave., NW., Suite 2.3D, Washington, DC 20229 or by email to [CEE@cbp.dhs.gov](mailto:CEE@cbp.dhs.gov). The immediate discontinuance will remain in effect during the appeal period. The Executive Director, Cargo and Conveyance Security, Office of Field Operations (OFO), CBP Headquarters, will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

Dated: August 21, 2012.

**David V. Aguilar,**

*Acting Commissioner, U.S. Customs and Border Protection.*

[FR Doc. 2012-21217 Filed 8-27-12; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5609-N-09]

### Proposed Information Collection for Public Comment: Electronic Stakeholder Survey—Office for International and Philanthropic Innovation

**AGENCY:** Office of Policy Development and Research, HUD.

**ACTION:** Notice of proposed information collection.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* October 29, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8234, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Sarah Gillespie at (202) 402-5843 (this is not a toll-free number). Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Gillespie.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (3) Enhance the quality, utility, and clarity of the

information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology that will reduce burden, (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

*Title of Proposal:* Electronic Stakeholder Survey.

*OMB Control Number:* XXXX-pending.

*Description of the need for the information and proposed use:* The Electronic Stakeholder Survey is necessary to collect information for demonstrating the outputs and outcomes of meetings, conferences, and other activities presented by HUD's Office for International and Philanthropic Innovation (IPI).

The Office for International and Philanthropic Innovation (IPI) supports HUD's efforts to find new solutions and align ideas and resources by working across public, private, and civil sectors to further HUD's mission. IPI works towards these goals by developing networks and facilitating collaboration of key partners and resources. To gather feedback on the various meetings, conferences, and other events and activities IPI presents, it is necessary to survey participants at both immediate and medium-term intervals. IPI is seeking to understand the effectiveness of these events in sharing information, connecting participants, establishing plans for coordination, and influencing programmatic, research, and funding agendas and resources. As we increase the effectiveness of these cross-sector convenings, HUD benefits from increased access to and synthesis of information regarding successes and failures in domestic and global housing and urban development. Residents and communities across the country also benefit from the increased impact achieved by alignment of cross-sector resources and ideas.

*Members of affected public:* Individuals.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

ESTIMATED RESPONDENT BURDEN HOURS AND COSTS

Form	Respondent sample	Number of respondents	Average time to complete (minimum, maximum) in minutes	Frequency	Total burden (hours)
Stakeholder Surveys .....	The public .....	300	10	Twice a year .....	100

*Respondent's Obligation:* Voluntary. *Status of the proposed information collection:* Pending OMB approval.

**Authority:** Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., 1701z-1 *et seq.*

Dated: August 21, 2012.

**Erika Poethig,**

*Acting Assistant Secretary for Policy Development and Research.*

[FR Doc. 2012-21234 Filed 8-27-12; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF THE INTERIOR**

**Geological Survey**

[GX.12.CD00.B9510.00]

**Agency Information Collection: Comment Request**

**AGENCY:** United States Geological Survey (USGS), Interior.

**ACTION:** Notice of an extension of a currently approved information collection, 1028-0095.

**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 collection is scheduled to expire on January 31, 2013.

**DATES:** You must submit comment on or before October 29, 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). Please reference Information Collection 1028-0095 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** John E. Schefter, Chief Office of External Research, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 424, Reston, Virginia 20192 (mail) at (703) 648-6800 (Phone); or *schefter@usgs.gov* (email).

**SUPPLEMENTARY INFORMATION: Title:** National Institutes for Water Resources (NIWR) USGS Competitive Grant Program.

**OMB Control Number:** 1028-0095.

**Abstract:** The NIWR-USGS National Competitive Grant Program issues an annual call for proposals to support research on water problems and issues of a regional or interstate nature beyond those of concern only to a single state and which relate to specific program priorities identified jointly by the USGS and the state water resources research institutes authorized by the Water Resources Research Act of 1984, as amended (42 U.S.C. 10301 *et seq.*). The program is conducted in conjunction with the State Water Resources Research Institutes. The NIWR cooperates with the USGS in establishing total programmatic direction, reporting on the activities of the Institutes, coordinating and facilitating regional research and information and technology transfer, and in operating the NIWR-USGS Student Internship Program. Any investigator at an accredited institution of higher learning in the United States is eligible to apply for a grant through a water research institute or center established under the provisions of the Act. Proposals involving substantial collaboration between the USGS and university scientists are encouraged. Proposals may be for projects of 1 to 3 years in duration and may request up to \$250,000 in federal funds. Successful applicants must match each dollar of the federal grant with one dollar from nonfederal sources. An annual progress and final technical report for all projects is required at the end of the project period. This program is authorized by the Water Resources Research Act of 1984, as amended (42 U.S.C. 10303(g)). No questions of a "sensitive" nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

**Frequency of Collection:** Annually.

**Affected Public:** Research investigators at accredited institutions of higher education.

**Respondent's Obligation:** Voluntary (necessary to receive benefits).

**Estimated Number and Description of Respondents:** We expect to receive approximately 65 applications and award 7 grants per year.

**Estimated Annual Reporting and Recordkeeping "Hour" Burden:** We estimate the public reporting burden to be 72 hours per response. This includes 60 hours per applicant to prepare and submit the application; and 12 hours (total) per grantee to complete the interim and final technical reports.

**Annual Burden Hours:** 3,984.

**Estimated Annual Reporting and Recordkeeping "Non-Hour Cost":** We have not identified any "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. 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 we will be able to do so.

Dated: August 22, 2012.

**John E. Scheffer,**

*Water Resources Research Act Program  
Coordinator.*

[FR Doc. 2012-21144 Filed 8-27-12; 8:45 am]

**BILLING CODE 4311-AM-P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

#### Announcement of National Geospatial Advisory Committee Meeting

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Geospatial Advisory Committee (NGAC) will meet on September 18-19, 2012 at the American Institute of Architects Building, 1735 New York Avenue NW., Washington, DC 20006. The meeting will be held in the Gallery Room. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A-16. Topics to be addressed at the meeting include:

- Leadership Dialogue
- Geospatial Platform
- Geolocation Privacy
- FGDC Report
- COGO Report Card
- Subcommittee Reports

The meeting will include an opportunity for public comment on September 19. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance. Please register by contacting Arista Maher at the U.S. Geological Survey (703-648-6283, [amaher@usgs.gov](mailto:amaher@usgs.gov)). Registrations are due by September 14, 2012. While the meeting will be open to the public, seating may be limited due to room capacity.

**DATES:** The meeting will be held from 8:30 a.m. to 5:30 p.m. on September 18 and from 8:30 a.m. to 4:00 p.m. on September 19.

**FOR FURTHER INFORMATION CONTACT:** John Mahoney, U.S. Geological Survey (206-220-4621).

**SUPPLEMENTARY INFORMATION:** Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC

and the meeting is available at [www.fgdc.gov/ngac](http://www.fgdc.gov/ngac).

Dated: August 22, 2012.

**Ken Shaffer,**

*Deputy Executive Director, Federal  
Geographic Data Committee.*

[FR Doc. 2012-21143 Filed 8-27-12; 8:45 am]

**BILLING CODE 4311-AM-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CACA-51625, LLCAD07000, L51010000,  
ER0000, LVRWB10B3800]**

#### Notice of Availability of the Record of Decision for San Diego Gas and Electric's East County Substation Project, San Diego County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for San Diego Gas and Electric's (SDG&E) East County (ECO) Substation Project, located in San Diego County, California. The Secretary of the Interior approved the ROD on August 21, 2012, which constitutes the final decision of the Department.

**ADDRESSES:** Copies of the ROD have been sent to responsible Federal, State, and local government agencies and other interested stakeholders, and are available upon request from the Field Manager, BLM El Centro Field Office, 1661 S. 4th Street, El Centro, California 92243, and the BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553, or via the Internet at the following Web site: <http://www.ca.blm.gov/elcentro>.

**FOR FURTHER INFORMATION CONTACT:** R. Brian Paul, Project Manager, telephone 760-337-4400; address BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553-9046; email [catulewind@blm.gov](mailto:catulewind@blm.gov).

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** SDG&E filed right-of-way (ROW) application CACA-51625 for the ECO Substation

Project. The ECO Substation Project will provide an interconnection hub for renewable generation along SDG&E's existing Southwest Powerlink (SWPL) 500-kilovolt (kV) transmission line. The project will consist of a 500/230/138 kV substation; a SWPL Loop-In (a short loop-in of the existing SWPL transmission line to the proposed ECO Substation); the rebuilt Boulevard Substation (an existing substation); and a 13.9-mile 138 kV transmission line connecting the new ECO Substation to the rebuilt Boulevard Substation, 0.8 mile of which is on public lands administered by the BLM (the remainder is located on private lands subject to the permitting authority of the California Public Utilities Commission). Through the ROD, the BLM approves the 0.8-mile portion of the 138 kV transmission line on BLM-administered public land, and makes no decision regarding those portions of the ECO Substation Project or other projects analyzed in the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) that are not located on BLM-managed lands.

The project site is located approximately 70 miles east of downtown San Diego, south of Interstate 8, east of the town of Jacumba and along Old Highway 80, in San Diego County, California, within Township 18 South, Ranges 8 East, Section(s) 02, 03, 10, and 11.

The BLM preferred alternative would allow the construction, operation, maintenance, and termination of the 0.8-mile underground segment of the project's 138 kV transmission line on BLM-managed lands, which is necessary for the construction of the ECO Substation Project. In addition to the ECO Substation Project, the Final EIS/EIR evaluated a ROW application by Tule Wind, LLC to construct the Tule Wind Project, as well as the Energia Sierra Juarez Project, and Gen-Tie, Campo, Manzanita wind energy projects. Although these project components were analyzed in the same EIS/EIR, only the 0.8-mile underground segment of the ECO Substation Project 138 kV transmission line and portions of the Tule Wind Project would be located on BLM-managed lands. The BLM issued a separate decision on Tule Wind, LLC's ROW application on December 20, 2011.

This agency preferred alternative was evaluated in the Final EIS/EIR. The Notice of Availability of the Final EIS/EIR for the ECO Substation Project was published in the **Federal Register** on October 14, 2011 (76 FR 381).

Because this decision is approved by the Secretary of the Interior, it is not

subject to administrative appeal (43 CFR 4.410(a) (3)).

**Authority:** 40 CFR 1506.6

**Mike Pool,**

*Acting Director, Bureau of Land Management.*

[FR Doc. 2012-21170 Filed 8-27-12; 8:45 am]

**BILLING CODE 4310-40-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLCAC06000.L16100000.DQ0000.LXSS095B0000]

#### Notice of Availability of the Proposed Bakersfield Resource Management Plan and Final Environmental Impact Statement, California

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared the Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) for the Bakersfield Field Office, California, and by this notice is announcing its availability.

**DATES:** BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the Proposed RMP/Final EIS. A person who meets the conditions must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability of the Proposed RMP/Final EIS in the **Federal Register**.

**ADDRESSES:** Copies of the Bakersfield Proposed RMP/Final EIS have been sent to affected Federal, State, and local agencies, Native American tribes, and to other interested parties. Copies of the Proposed RMP/Final EIS are available for public inspection at the Bakersfield Field Office (3801 Pegasus Drive, Bakersfield, California 93308) and California State Office (2800 Cottage Way, Sacramento, California 95825). Interested persons may also review the Proposed RMP/Final EIS on the Internet at: [www.blm.gov/ca/bakersfield](http://www.blm.gov/ca/bakersfield). All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210),  
Attention: Brenda Williams, P.O. Box  
71383, Washington, DC 20024-1383.  
Overnight Mail: BLM Director (210),  
Attention: Brenda Williams, 20 M

Street SE., Room 2134LM,  
Washington, DC 20003-3503.

**FOR FURTHER INFORMATION CONTACT:** Sue Porter, Planning & Environmental Coordinator, Bakersfield Field Office, telephone: 661-391-6022; address: Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, California 93308; email: [cacalrmp@blm.gov](mailto:cacalrmp@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Proposed RMP/Final EIS addresses public land and resources managed by the Bakersfield Field Office in an eight-county, 17-million-acre region of central California in Kings, San Luis Obispo, Santa Barbara, Tulare, Ventura, Madera, eastern Fresno, and western Kern counties. Upon approval, this land use plan will replace the 1997 Caliente RMP and the 1984 Hollister RMP, as amended, and provide updated management decisions regarding recreation, transportation and access, renewable and traditional energy development, mineral resources, land use authorizations, livestock grazing, biological resources, special designations, lands with wilderness characteristics, and other resource uses and considerations on approximately 404,000 acres of public land and 1.2 million acres of Federal mineral estate. The Approved RMP will apply only to the BLM-administered public lands and Federal mineral estate in the planning area.

The Proposed RMP/Final EIS analyzes five management alternatives:

- The No Action alternative (Alternative A) would continue current management under the existing 1997 Caliente RMP and 1984 Hollister RMP, as amended.
- The Proposed Plan (Alternative B) strives to balance resource conservation and ecosystem health with the production of commodities and public use of the land.
- Alternative C emphasizes conserving cultural and natural resources, maintaining functioning natural systems, and restoring natural systems that are degraded.
- Alternative D follows Alternative C in all aspects except with regard to livestock grazing. Alternative D would eliminate livestock grazing from BLM

managed lands in the planning area for the life of this land use plan.

- Alternative E emphasizes the production of natural resources and commodities while emphasizing public use opportunities.

The Proposed RMP/Final EIS would establish 18 Areas of Critical Environmental Concern, totaling approximately 99,500 acres, to provide special management for the protection of relevant and important biological, cultural, geologic, and paleontological resource values. The proposed plan would also apply protective management to approximately 3,470 acres of lands with wilderness characteristics in six different areas. Public lands available for energy development, land use authorizations, livestock grazing, systems of designated travel routes, and other uses would be provided for under the proposed plan, which would delineate and, as necessary, apply limitations on these uses. In addition, management parameters and prescriptions would be applied to a variety of natural and cultural resources, including air and atmospheric values, water quality, special status plant and animal species, and other components of the biological, physical, and cultural environment.

The land use planning process was initiated on March 4, 2008, through a Notice of Intent published in the **Federal Register** (73 FR 11661). A Notice of Availability of the Draft RMP/Draft EIS was published on September 9, 2011, in the **Federal Register** (76 FR 55941) to announce a 90-day public review and comment period. During that period, the BLM held public open-house meetings in Bakersfield, San Luis Obispo, Lake Isabella, Three Rivers, Taft, and Prather to assist the public in their review of the Draft RMP/Draft EIS and to solicit their comments. The Draft RMP/Draft EIS was sent to multiple Federal, State, and local government agencies and interested parties and was made publicly available for viewing at the Bakersfield Field Office, the California State Office, various public libraries, and on the Internet.

During the comment period, the Bakersfield Field Office received 274 written comment submissions from comment forms, which were completed during one of the public open-house meetings, as well as comment letters and emails. Each submission was carefully reviewed to identify substantive comments in accordance with the implementing regulations of NEPA (40 CFR 1503.4).

Comments on the Draft RMP/Draft EIS received from the public and internal

BLM review were considered and incorporated as appropriate into the Proposed RMP/Final EIS. Public comments resulted in the addition of clarifying text and minor revisions, but did not significantly change the proposed land use plan decisions.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP/Final EIS may be found in the "Dear Reader" letter of the Proposed RMP/Final EIS and at 43 CFR 1610.5-2. All protests must be in writing and mailed to the appropriate address, as set forth in the ADDRESSES section above. Emailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to [Brenda\\_Hudgens-Williams@blm.gov](mailto:Brenda_Hudgens-Williams@blm.gov) and faxed protests to the attention of the BLM protest coordinator at 202-245-0028. Before including your address, phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest 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, 43 CFR 1610.2, and 43 CFR 1610.5-2.

**Thomas Pogacnik,**

*Deputy State Director, Natural Resources.*

[FR Doc. 2012-21154 Filed 8-23-12; 4:15 pm]

**BILLING CODE 4310-40-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLIDB00100 LF1000000.HT0000  
LXSS020D0000 4500037644]

#### **Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior**

**AGENCY:** Bureau of Land Management, U.S. Department of the 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) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

**DATES:** The meeting will be held September 13, 2012, at the Boise District Office, located at 3948 S. Development Avenue, Boise, Idaho, beginning at 9:00 a.m. and adjourning at 4:30 p.m. Members of the public are invited to attend. A public comment period will be held.

**FOR FURTHER INFORMATION CONTACT:** Marsha Buchanan, Supervisory Administrative Specialist and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384-3364.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. Items on the agenda include a report about the two field trips RAC Members attended. A report on the wildland fires within Boise District and the region will be provided. The RAC Members will be briefed on the status of the Gateway West Proposed Transmission Line project. An update on the Paradigm Project will be provided by the District's Fuels Program, and the environmental impact statement for renewal of 25 grazing permits in western Owyhee County. Implementation of the Omnibus Public Lands Management Act of 2009, Subpart F-Owyhee Public Land Management will be reviewed. Each field manager will discuss progress being made on priority actions in their offices. Agenda items and location may change due to changing circumstances. The public may present written or oral comments to members of the Council. At each full RAC meeting, time is provided in the agenda for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Dated: August 16, 2012.

**Meagan Conry,**

*Acting District Manager.*

[FR Doc. 2012-21165 Filed 8-27-12; 8:45 am]

**BILLING CODE 4310-GG-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-11022; 2200-1100-665]

#### **Notice of Intent To Repatriate Cultural Items: U.S. Department of Agriculture, Forest Service, Coconino National Forest, Flagstaff, AZ**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture (USDA), Forest Service, Coconino National Forest, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the USDA Forest Service, Southwestern Region.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the USDA Forest Service, Southwestern Region at the address below by September 27, 2012.

**ADDRESSES:** Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd., SE., Albuquerque, NM 87102, telephone (505) 842-3238.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Natural History Museum of Los Angeles County and under the control of the Coconino National Forest that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item(s). The National Park Service is not responsible for the determinations in this notice.

### History and Description of the Cultural Items

In 1926, three unassociated funerary objects [Catalogue #s A2827.31-1, A2827.31-3 and A2827.31-5] were removed from Elden Pueblo (site NA 142) in Coconino County, AZ, during legally authorized archaeological excavations conducted by Jesse W. Fewkes of the Smithsonian Institution. The Elden Pueblo (site NA 142) is on the Coconino National Forest. These three objects have been curated at the Natural History Museum of Los Angeles County, Los Angeles, CA, since 1931, when the Smithsonian Institution transferred the objects to the museum. The three unassociated funerary objects are two ceramic bowls and one ceramic jar.

Based on archaeological evidence and material culture, Elden Pueblo (site NA 142) has been identified as a Northern Sinagua site, comprised of a pueblo, pithouses, and outlier pueblos, which were occupied in the second half of the 13th and the first quarter of the 14th centuries A.D. The records at the Natural History Museum of Los Angeles County and the Smithsonian Institution indicate that these three cultural items were removed from a burial context and that the human remains were either left in the ground or are not locatable at the present time. Continuities among the ethnographic materials in the Flagstaff area of north central Arizona indicate that the Northern Sinagua sites in that area are affiliated with the Hopi Tribe, Arizona. In addition, oral traditions presented by representatives of the Hopi Tribe support their claims of cultural affiliation with Northern Sinagua sites in this portion of north central Arizona.

### Determinations Made by the USDA Forest Service, Southwestern Region

Officials of the USDA Forest Service, Southwestern Region and the Coconino National Forest have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the three cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hopi Tribe, Arizona.

### Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally

affiliated with the unassociated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd., SE., Albuquerque, NM 87102, telephone (505) 842-3238 before September 27, 2012. Repatriation of the unassociated funerary objects to the Hopi Tribe, Arizona, may proceed after that date if no additional claimants come forward.

The Coconino National Forest is responsible for notifying the Hopi Tribe, Arizona, that this notice has been published.

Dated: August 6, 2012.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2012-20952 Filed 8-27-12; 8:45 am]

**BILLING CODE 4312-50-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS-WASO-NAGPRA-10998; 2200-1100-665]**

### Notice of Intent To Repatriate Cultural Items: Arizona State Museum, University of Arizona, Tucson, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Arizona State Museum, University of Arizona, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Arizona State Museum, University of Arizona.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Arizona State Museum, University of Arizona, at the address below by September 27, 2012.

**ADDRESSES:** John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626-2950.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Arizona State Museum, University of Arizona, Tucson, AZ, that meet the definition of

unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

### History and Description of the Cultural Items

The unassociated funerary objects are six ceramic bowls, four ceramic jars, two ceramic pitchers, and three ceramic sherds. The funerary objects were removed from the Burrue site, AZ AA:16:58 (ASM), which is located on private land adjacent to the San Xavier Indian Reservation, Pima County, AZ. The Burrue site was inadvertently discovered in 1979 by the property owner and excavation of human remains and funerary objects was conducted by staff from the Arizona State Museum. The human remains and funerary objects were brought to the Arizona State Museum for documentation. The funerary objects were returned to the property owner later that same year. In 1980, the property owner transferred control of the human remains to the Arizona State Museum. The human remains were reported in a Notice of Inventory Completion in the **Federal Register** (73 FR 8356-8357, February 13, 2008) and were subsequently repatriated. At an unknown date, the funerary objects were acquired by Dr. Peter Toma. In May 2012, Dr. Toma donated all of the funerary objects to the Arizona State Museum. The Burrue site includes at least two trash mounds and a cremation area. Ceramics associate the site with the Tanque Verde phase of the Classic period of the Hohokam Archeological tradition, dating to approximately AD 1150 to 1450.

Father Eusebio Kino visited the O'odham village of Bac in 1692 and established Mission San Xavier. He reported the presence of 800 inhabitants at the time of his first visit. O'odham people have continued to occupy the land in the vicinity of the mission throughout the historic period. They also identify themselves with the Hohokam Archeological tradition. Cultural continuity between the prehistoric occupants of the region and present day O'odham and Puebloan peoples is supported by continuities in settlement pattern, architectural technologies, basketry, textiles, ceramic technology, ritual practices, and oral

traditions. The descendants of the O'odham peoples of the areas described above are members of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona. The descendants of the Puebloan peoples of the areas described above are members of the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico.

#### **Determinations Made by the Arizona State Museum, University of Arizona**

Officials of the Arizona State Museum, University of Arizona have determined that

- Pursuant to 25 U.S.C. 3001(3)(B), the 15 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as "The Tribes").

#### **Additional Requestors and Disposition**

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626-2950, before September 27, 2012. Repatriation of the unassociated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying The Tribes that this notice has been published.

Dated: August 1, 2012.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2012-20949 Filed 8-27-12; 8:45 am]

**BILLING CODE 4312-50-P**

## **DEPARTMENT OF THE INTERIOR**

### **National Park Service**

**[NPS-WASO-NAGPRA-11009; 2200-1100-665]**

#### **Notice of Inventory Completion: Brigham Young University, Museum of Peoples and Cultures, Provo, UT; Correction**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Brigham Young University Museum of Peoples and Cultures, Provo, UT. The human remains and associated funerary objects were removed from San Juan County, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals and the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (75 FR 58433-58435, September 24, 2010). A recent re-inventory of culturally unidentifiable human remains led to the recognition of culturally identifiable human remains from Iceberg Canyon near Lake Powell, San Juan County, UT.

In the **Federal Register** (75 FR 58433-58435, September 24, 2010), paragraph seven is corrected by substituting the following paragraph:

At an unknown date, human remains representing a minimum of six individuals were removed from an unknown location in Iceberg Canyon near Lake Powell, San Juan County, UT, by private individuals. No further geographical information is known. In 1971, the human remains were donated to the Museum of Peoples and Cultures and were accessioned (Catalog Nos. 1971.11.5.0 and 1971.19.1.0). No known individuals were identified. The two associated funerary

objects are one lot of clothing fragments and one piece of petrified wood.

In the **Federal Register** (75 FR 58433-58435, September 24, 2010), paragraph 23, sentences one and two are corrected by substituting the following sentences:

Officials of the Museum of Peoples and Cultures have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 39 individuals of Native American ancestry. Officials of the Museum of Peoples and Cultures also have determined that pursuant to 25 U.S.C. 3001(3)(A), the 139 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

#### **Additional Requestors and Disposition**

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Paul Stavast, Museum of Peoples and Cultures, Brigham Young University, 105 Allen Hall, Provo, UT 84602-3600, telephone (801) 422-0018, before September 27, 2012. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico (formerly the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as "The Tribes"), may proceed after that date if no additional claimants come forward.

The Museum of Peoples and Cultures is responsible for notifying The Tribes that this notice has been published.

Dated: August 3, 2012.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2012-20938 Filed 8-27-12; 8:45 am]

**BILLING CODE 4312-50-P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS-WASO-NAGPRA-11046; 2200-1100-665]

**Notice of Inventory Completion: American Museum of Natural History, New York, NY; Correction****AGENCY:** National Park Service, Interior.  
**ACTION:** Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were removed from Clallam County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (69 FR 42771-42772, July 16, 2004). Following the notice publication, museum staff discovered post-cranial elements of another individual from the site in Port Williams, Clallam County, WA. The total number of individuals from the site is increasing from 238 to 239.

In the **Federal Register** (69 FR 42771-42772, July 16, 2004), paragraph ten, sentence one is corrected by substituting the following sentence:

In 1899, human remains representing a minimum of 239 individuals were removed from the surface of a sand spit in Port Williams, Clallam County, WA, by Harlan I. Smith during the Jesup North Pacific Expedition.

In the **Federal Register** (69 FR 42771-42772, July 16, 2004), paragraph twelve, sentence one is corrected by substituting the following sentence:

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of a minimum of 391 individuals of Native American ancestry.

**Additional Requestors and Disposition**

Representatives of any other Indian tribe that believes itself to be culturally

affiliated with the human remains should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, 79th Street at Central Park West, New York, NY, 10024, telephone (212) 769-5837, before September 27, 2012. Repatriation of the human remains to the Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; and the Port Gamble Indian Community of the Port Gamble Reservation, Washington, may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; and the Port Gamble Indian Community of the Port Gamble Reservation, Washington, that this notice has been published.

Dated: August 8, 2012.

**Sherry Hutt,***Manager, National NAGPRA Program.*

[FR Doc. 2012-20934 Filed 8-27-12; 8:45 am]

**BILLING CODE 4312-50-P****DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS-WASO-NAGPRA-10981; 2200-1100-665]

**Notice of Inventory Completion: Longyear Museum of Anthropology, Colgate University, Hamilton, NY****AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

**SUMMARY:** The Longyear Museum of Anthropology has completed an inventory of human remains in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the museum. Disposition of the human remains to the Indian tribe stated below may occur if no additional requestors come forward.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Longyear Museum of Anthropology at the address below by September 27, 2012.

**ADDRESSES:** Dr. Jordan Kerber, Longyear Museum of Anthropology, Department of Sociology and Anthropology, Colgate

University, 13 Oak Dr., Hamilton, NY 13346, telephone (315) 228-7559.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Longyear Museum of Anthropology, Colgate University, Hamilton, NY. The human remains were removed from an unknown location in Marion County, OH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the Longyear Museum of Anthropology professional staff in consultation with representatives of the Little Traverse Bay Bands of Odawa Indians, Michigan. Letters were sent to the following tribes, inviting them to consult: Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; St. Croix Chippewa Indians of Wisconsin; Sault Ste. Marie Tribe of Chippewa Indians of Michigan;

Seneca-Cayuga Tribe of Oklahoma; Shawnee Tribe, Oklahoma; Sokaogon Chippewa Community, Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation, Oklahoma.

### History and Description of the Remains

At an unknown date, human remains representing, at minimum, two individuals were removed from an unknown location described as "Mound Builder grave, Mound B" in Marion County, OH. The human remains were acquired by the Longyear Museum of Anthropology between 1948 and 1979, and accessioned as part of the Howe Collection (catalog number A372). The human remains were subsequently assigned index number 464 in the Colgate Collection database. No known individuals were identified. No associated funerary objects are present.

### Determinations Made by the Longyear Museum of Anthropology

Officials of the Longyear Museum of Anthropology have determined that:

- Based on the presence of Native American artifacts in the Howe Collection, the description of the site from which the human remains were recovered, and the records in the Longyear Museum of Anthropology, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- The 1795 Treaty of Greenville (7 Stat. 49, December 2, 1795), indicates that the land from which the Native American human remains were removed is the aboriginal land of the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Little Traverse Bay Bands of Odawa Indians, Michigan; Shawnee Tribe, Oklahoma; and the Wyandotte Nation, Oklahoma. The Little Traverse Bay Bands of Odawa Indians, Michigan, have at least two signatories on the 1795 Treaty of Greenville (La Malice and Keenoshameek), which ceded land to the United States Government, including land that is now Marion County, OH.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Little Traverse Bay Bands of Odawa Indians, Michigan.

### Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Dr. Jordan Kerber, Longyear Museum of Anthropology, Department of Sociology and Anthropology, Colgate University, 13 Oak Dr., Hamilton, NY 13346, telephone (315) 228-7559, before September 27, 2012. Disposition of the human remains to the Little Traverse Bay Bands of Odawa Indians, Michigan, may proceed after that date if no additional requestors come forward.

The Longyear Museum of Anthropology is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Little Traverse Bay Bands of Odawa Indians, Michigan; Shawnee Tribe, Oklahoma; and the Wyandotte Nation, Oklahoma, that this notice has been published.

Dated: July 31, 2012.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2012-20953 Filed 8-27-12; 8:45 am]

**BILLING CODE 4312-50-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1103-0102]

### Agency Information Collection Activities; Revision of a Previously Approved Collection; Comments Requested; COPS Progress Report

**ACTION:** 30-Day Notice.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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 116, Pages 36001-36002, on June 15, 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 September 27, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or

associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Danielle Ouellette, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

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:* Extension of a previously approved collection; comments requested.

(2) *Title of the Form/Collection:* COPS Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Under the Violent Crime and Control Act of 1994, the U.S. Department of Justice COPS Office would require the completion of the COPS Progress Report by recipients of COPS hiring and non-hiring grants. Grant recipients must complete this report in order to inform COPS of their activities with their awarded grant funding.

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 approximately 7,600 annual, quarterly,

and final report respondents can complete the report in an average of 25 minutes.

(5) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,167 total annual burden hours associated with this collection.

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.

Dated: August 22, 2012.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2012-21074 Filed 8-27-12; 8:45 am]

**BILLING CODE 4410-AT-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that on August 23, 2012, a proposed Consent Decree was lodged with the United States District Court for the District of Massachusetts in *Conservation Law Foundation, Inc. and United States v. Boston Water and Sewer Commission, et al.*, Civil Action No. 10-cv-10250-RGS (D. Mass.).

The Consent Decree resolves the United States' and the Conservation Law Foundation's claims of violations under Section 301 of the Clean Water Act, 33 U.S.C. 1311, relating to discharges of pollutants from the Boston Water and Sewer Commission's municipal separate storm sewer system ("MS4") and wastewater collection system into Boston Harbor and its tributaries. The Consent Decree requires the BWSC to develop and implement various programs to address these discharges, including (a) Improvements to BWSC's program to identify and eliminate illicit discharges to its MS4, (b) stormwater modeling, (c) stormwater control through best management practices, (c) capacity, management, operation and maintenance corrective action, (d) construction site inspection and enforcement, and (e) industrial facility stormwater pollution prevention. BWSC will also pay a civil penalty of \$235,000 and implement a supplemental environmental project worth at least \$160,000 involving the lining of at least 25 leaking private sewer laterals that have been identified as sources of sewage to BWSC's storm drains.

For a period of thirty (30) days from the date of this publication, the United States Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, and should either be emailed to *pubcommentees.enrd@usdoj.gov* or mailed to U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. The comments should refer to *Conservation Law Foundation, Inc. and United States v. Boston Water and Sewer Commission, et al.*, D.J. Ref. #90-5-1-1-10166.

During the public comment period, the proposed Consent Decree may be examined on the following Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044-7611 or by faxing or emailing a request to "Consent Decree Copy" (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514-0097, phone confirmation number (202) 514-5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of \$19.50 (\$.25 per page reproduction cost for the 78 page proposed Consent Decree) payable to the U.S. Treasury. If you would also like a copy of the attachments to the proposed Consent Decree, please so note and include an additional \$36.00 (25 cents per page for the 144 pages of attachments). If requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

**Ronald G. Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 2012-21148 Filed 8-27-12; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines)

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection

request (ICR) titled, "Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines)," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

**DATES:** Submit comments on or before September 27, 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, 725 17th Street NW., 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*.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** Diesel particulate matter (DPM) is a probable carcinogen that consists of tiny particles present in diesel engine exhaust that can readily penetrate into the deepest recesses of the lungs. Despite ventilation, the confined underground mine work environment may contribute to significant concentrations of particles produced by equipment used in the mine. Underground miners are exposed to higher concentrations of DPM than any other occupational group. As a result, they face a significantly greater risk than other workers do of developing such diseases as lung cancer, heart failure, serious allergic responses, and other cardiopulmonary problems.

The DPM regulation established a permissible exposure limit to total carbon, which is a surrogate for measuring a miner's exposure to DPM. These regulations include a number of other requirements for the protection of miners' health. The DPM regulations contain information collection requirements for underground metal and non-metal mine operators under

Regulations 30 CFR 57.5060, 57.5065, 57.5066, 57.5070, 57.5071, and 57.5075(a) and (b)(3).

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 Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219-0135. The current approval is scheduled to expire on September 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 June 4, 2012 (77 FR 33002).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219-0135. 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: Health Standards for Diesel Particulate Matter Exposure

(Underground Metal and Nonmetal Mines).

OMB Control Number: 1219-0135.

Affected Public: Private sector—businesses or other for-profits.

Total Estimated Number of Respondents: 173.

Total Estimated Number of Responses: 28,022.

Total Estimated Annual Burden Hours: 3,329.

Total Estimated Annual Other Costs Burden: \$509,532.

Dated: August 22, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012-21194 Filed 8-27-12; 8:45 a.m.]

BILLING CODE 4510-43-P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 163rd Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 163rd open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held via teleconference on September 25, 2012.

The meeting will take place in C5521 Room 4, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Public access is available only in this room (i.e. not by telephone). The meeting will run from 10:00 a.m. to approximately 4:00 p.m. The purpose of the open meeting is to discuss reports/recommendations for the Secretary of Labor on the issues of (1) Managing Disability Risks in an Environment of Individual Responsibility; (2) Current Challenges and Best Practices Concerning Beneficiary Designations in Retirement and Life Insurance Plans; and (3) Examining Income Replacement During Retirement Years in a Defined Contribution Plan System. Descriptions of these topics are available on the Advisory Council page of the EBSA Web site at [http://www.dol.gov/ebsa/aboutebsa/erisa\\_advisory\\_council.html](http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html).

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before September 18, 2012 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5623, 200 Constitution Avenue NW., Washington,

DC 20210. Statements also may be submitted as email attachments in text or pdf format transmitted to [good.larry@dol.gov](mailto:good.larry@dol.gov). It is requested that statements not be included in the body of an email. Statements deemed relevant by the Advisory Council and received on or before September 18 will be included in the record of the meeting and made available in the EBSA Public Disclosure Room, along with witness statements. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693-8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by September 18, 2012 at the address indicated.

Signed at Washington, DC this 22nd day of August, 2012.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2012-21126 Filed 8-27-12; 8:45 am]

BILLING CODE 4510-29-P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application No. L-11688]

#### Notice of Proposed Exemption Involving Sharp HealthCare Located in San Diego, CA

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document contains a notice of pendency (the Notice) before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). The transactions involve the Sharp HealthCare Health and Dental Plan (the Plan). The proposed exemption, if granted, would affect the Plan, its participants and beneficiaries, Sharp HealthCare (Sharp), and the Sharp Health Plan (the HMO).

**DATES:** *Effective Date:* The proposed exemption, if granted, will be effective as of August 1, 2006.

**DATES:** Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department within 33 days from the date of publication of this **Federal Register** Notice.

**ADDRESSES:** Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Application No. L-11688. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to:

*moffitt.betty@dol.gov*, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue NW., Washington, DC 20210. Comments and hearing requests will also be available online at *www.regulations.gov* and *www.dol.gov/ebsa*, at no charge.

**Warning:** If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

**FOR FURTHER INFORMATION CONTACT:** Mr. Warren Blinder, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202)

693-8553. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This document contains a notice of proposed exemption that, if granted, would provide exemptive relief from sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act, effective August 1, 2006, for the purchase of health insurance by the Plan from the HMO, a non-profit health maintenance organization wholly owned by the Plan's sponsor, Sharp, through a 100% non-profit membership interest.

### Summary of Facts and Representations<sup>1</sup>

#### 1. Background

Sharp is an integrated health care delivery system located in San Diego County. Sharp was created in 1946 as a non-profit association to raise funds to build a hospital and in 1955, based on a lead donation from Thomas E. Sharp, a hospital was built on 12.5 acres in Kearney Mesa, California. From that hospital, Sharp HealthCare has grown into a countywide system comprised of five hospitals, multiple clinics, and two pharmacies.

In 1992, Sharp established its own licensed HMO through a subsidiary corporation called "Sharp Health Plan." The HMO is a 501(c)(4) corporation and Sharp is its sole member, with appointment authority over 100% of the HMO's Board of Director positions. The HMO offers a provider network that consists of 5 Sharp-affiliated hospitals, 5 Sharp-affiliated urgent care clinics, 11 Sharp-affiliated pharmacies, and 347 Sharp-affiliated (or Sharp-contracted) physicians in 4 different medical groups. Additionally, the HMO offers access to 7 non-Sharp affiliated hospitals, 25 non-Sharp affiliated urgent care clinics, approximately 360 non-Sharp affiliated pharmacies, and 570 non-Sharp affiliated physicians comprised of 290 physicians in 4 different medical groups, and 280 independent physicians. The HMO is licensed by the California Department of Managed Health Care and is offered to San Diego employers and individuals. The Applicant notes that the HMO and Sharp's facilities have a good reputation in San Diego County and have received numerous awards for quality over the years. Additionally, Sharp states that it has more licensed hospital beds than any other health care provider in San Diego County.

<sup>1</sup> The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department.

Sharp provides health benefits to its employees under the Plan. As of March 2012, the Plan had 10,993 participants and provided benefits to approximately 24,339 individuals. In 1993, Sharp began providing its employees' medical and vision benefits under the HMO. As the HMO is the only available option under the Plan, all participants were covered under the HMO. Each year, Sharp establishes a flat employee contribution rate for different levels of coverage (e.g., employee-only, employee plus-one, employee plus-family) and Sharp pays any remaining premiums based on the rates that it negotiates with the HMO. Between 2006 and 2010 Sharp paid approximately 85% of the premium cost of such coverage and employees paid the remaining 15% through pre-tax salary deferral contributions. Employee contributions are collected by Sharp, put into its general account and used as part of the premium payment to the HMO. The Applicant represents that all such plan assets are spent on premiums almost immediately upon being withheld from employees' paychecks. Employees also make co-payments directly to the actual providers of the medical care they receive, including Sharp, if the services have been provided in one of its facilities.

The HMO sets premiums for Sharp employees based on the experience of the Sharp employee population, as is the case with its other employer clients. The Applicant notes that, as a non-profit, the HMO only retains sufficient earnings to maintain its legally required reserves. In addition, the Applicant states that the HMO reduces its claims administration costs and is able to get better capitated rates from providers by pooling all of the covered lives under the HMO, rather than negotiating separate claims administration and capitated rate negotiations for just the Sharp employee population. According to the Applicant, this reduces the overall cost of health benefits under the Plan, ultimately reducing the cost Sharp employees pay for their coverage.

Sharp is designated as the plan administrator of the Sharp HealthCare Group Health and Welfare Plan.<sup>2</sup> In the past, Sharp's Board of Directors had not appointed an administrative committee to act as the plan administrator on behalf of Sharp, but going forward, the Sharp Board of Directors will appoint a committee to act as the plan administrator for the Plan in place of

<sup>2</sup> The Applicant states that Sharp, its Board of Directors, Anne Stephenson, Ann Pumpian and Carlisle Lewis, III, Esq., are all fiduciaries within the meaning of section 3(21) of the Act.

Sharp, which will be comprised of the: (1) Senior Vice President, General Counsel, (2) Senior Vice President/Chief Financial Officer, and (3) Vice President/Compensation and Benefits. The Applicant states that although each of these employees receives a portion of their compensation based on factors that include “target net revenue,”<sup>3</sup> Sharp’s use of the HMO for its employees has little, if any, impact on such compensation. The Applicant explains that the portion of target net revenue attributable to the Plan’s use of the HMO for its employees is immaterial, and any premiums that are paid to the HMO are ultimately offset as a revenue item by fees the HMO pays to Sharp for medical and other services.

Sharp’s Vice President of Compensation and Benefits conducts an annual review to determine the reasonableness of total premiums paid by Sharp employees for coverage under the HMO. Sharp’s Vice President of Compensation and Benefits also reviews the “employee share” rates to make sure that they are competitive when compared to the rates their peer employers are charging. The Applicant notes that the Vice President of Compensation and Benefits has used the services of outside vendors, such as Keenan & Associates and SDH Consultants to assist her in this comparison, and based on these surveys, Sharp has concluded that the premiums paid, as well as the employees’ share of such premiums, for coverage under the HMO were reasonable.

## 2. Request for Relief

The Applicant represents that for 18 years, Sharp has provided its employees with health insurance through the HMO, under the mistaken belief that this coverage was permissible under Prohibited Transaction Exemption (PTE) 79–41, 44 FR 46365 (August 7, 1979). The Applicant relates that, on April 5, 2011, the Los Angeles Regional Office of the Department of Labor (the Department) concluded an audit of the Plan and determined that the Plan’s provision of coverage under the HMO did not meet the requirements of Section II(a)(1) of PTE 79–41, as described below.

PTE 79–41 provides that the restrictions of sections 406(a), 406(b)(1) and (2), and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,

<sup>3</sup> According to the Applicant, target net revenue is made up of all Sharp revenue, except “Medi-Cal” hospital fee program receipts, reduced by bad debt.

shall not apply to the sale, in any taxable year, by an insurance company which is a party in interest or disqualified person with respect to an employee benefit plan, of life insurance, health insurance, and annuities if certain conditions are met.

Section II(a) of PTE 79–41 provides that the insurance company making the sale must:

(1) [Be] a party in interest or disqualified person with respect to the plan by reason of a stock or partnership (including a joint venture) affiliation with the employer establishing or maintaining the plan that is described in section 3(14)(E) or (G) of the Act\* \* \*

(2) [Be] licensed to sell insurance in at least one of the United States or in the District of Columbia,

(3) [Have] obtained a Certificate of Compliance from the insurance commissioner of its domiciliary state within the 18 months prior to the date when the transaction is entered into or when such certificates were last made available by the domiciliary state, if earlier, and

(4)(i) [Have] undergone a financial examination (within the meaning of the law of its domiciliary state) by the insurance commissioner of such state within 5 years prior to the end of the year preceding the year in which the sale occurred, or

(ii) [Have] undergone an examination by an independent certified public accountant for its last completed taxable year.

The Applicant states that Section II(a)(1) has not been complied with because Sharp does not have a stock or partnership interest in the HMO, but instead is the sole member of the HMO, and as such, has the power to appoint 100% of the HMO’s Board of Directors. Nevertheless, the Applicant contends that Sharp’s control of the HMO is no less complete than it would be if Sharp’s ownership interest was denominated in the form of stock or a partnership interest.<sup>4</sup>

The Applicant maintains that the general premise undergirding PTE 79–41 is no less applicable in the case of a non-profit health care system whose ownership is through membership rather than a shareholder interest. In this regard, the Applicant states that health systems that maintain their own HMO or insurance policies invariably use those policies to provide health insurance benefits to their own employees. Thus, according to the

<sup>4</sup> The Applicant maintains that the DOL and the IRS are of the view that, in the context of a non-profit corporation, control may be exercised through appointment power over the Board of Directors rather than stock or partnership interests. See ERISA Opinion Letter 82–48A (September 16, 1982), and Treasury Regulation 1.414(c)–5(b). The Department expresses no opinion herein as to the applicability of the aforementioned authorities to the covered transactions.

Applicant, it would be “contrary to ordinary business practices, and unnecessarily restrictive, to require” an employer who is in the business of selling health insurance to purchase such health insurance for its employees from a competitor.

Furthermore, Sharp contends that its control of the HMO via a non-profit membership interest presents a non-substantive, technical violation of the class exemption that has no bearing on the relief afforded to the Plan and its parties in interest, or the protection of the interests of the Plan and its participants and beneficiaries. The Applicant states that the relationship between Sharp and the HMO reflects the “qualities” behind PTE 79–41’s affiliation requirement. In this regard, the Applicant observes that Sharp and the HMO are part of a closely connected system that have a common mission and integrated operations, and that Sharp could not find an independent carrier that would be as responsive to employer and participant needs as the HMO. According to the Applicant, the fact that Sharp and the HMO are non-profit corporations and do not have stock or partnership interests, and, therefore, exercise control through Sharp’s Board of Directors’ appointment authority, does not in any way diminish Sharp’s control over and comprehensive integration with the HMO. Thus, the Applicant submits that Sharp’s failure to meet the affiliation condition of PTE 79–41, as described herein, is merely technical in nature and not meaningful to the Department’s granting of relief under PTE 79–41.

The Applicant is therefore requesting a retroactive exemption from sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act for the Plan’s purchase of health care coverage from the HMO, which Sharp wholly-owns through a non-profit membership interest, effective August 1, 2006 through and until the date of publication of a final grant of exemption in the **Federal Register**. Furthermore, the Applicant is requesting a prospective exemption from sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act for the Plan’s continued purchase of health care coverage from the HMO, which Sharp wholly-owns through a non-profit membership interest, effective as of the date of publication of a final grant of exemption in the **Federal Register**.<sup>5</sup>

<sup>5</sup> The Applicant represents that Sharp provides certain services to the HMO in connection with the operation of its integrated health care delivery system. The Applicant states that Sharp is of the view that these services are within the scope of

After considering the Applicant's request, the Department has determined to propose an individual prohibited transaction exemption. The proposed exemption has been requested in an application filed by Sharp pursuant to section 408(a) of ERISA and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990).

### 3. Compliance With Conditions of PTE 79-41

The Applicant urges the Department to propose exemptive relief, because, according to the Applicant, all of the conditions of relief required under PTE 79-41 have been satisfied with respect to the Sharp arrangement described herein, except the condition in Section II(a)(1), requiring that Sharp control the HMO via a stock or partnership ownership interest. In this regard, the Applicant represents that the HMO: Is licensed as an HMO in California by the Department of Managed Healthcare; has been certified by the California Department of Managed Healthcare as being in compliance with the requirements for a licensed HMO within the last 18 months; and has undergone a financial examination by the California Department of Managed Healthcare within the last five years and is audited by an independent certified public accountant each year, including its last completed taxable year. Therefore, the Applicant maintains that Sharp has satisfied the conditions set forth in Sections II(a)(2), (3), and (4) of PTE 79-41. The Applicant also represents that the amount the Plan pays to Sharp for HMO coverage is reasonable and does not exceed the amount that would be paid for similar services in an arm's length transaction between unrelated parties, thereby satisfying Section II(b) of PTE 79-41. The Applicant also represents that no commissions are paid by the Plan for the insurance coverage purchased from the HMO, thereby satisfying Section II(c) of PTE 79-41. Finally, the Applicant states that the total HMO premiums collected for participants in the Plan (including employee and employer payments) have always, during the period covered by this application, been less than 50% of total premiums collected by the HMO. Therefore, the Applicant maintains that

exemptive relief provided by section 408(b)(2) of ERISA. The Department is expressing no opinion herein regarding whether the provision of a service by Sharp to the HMO in connection with the operation of its integrated health care delivery system is within the scope of relief provided by that statutory exemption.

the condition contained in Section II(d) of PTE 79-41 is satisfied.

### 4. Additional Protections

According to the Applicant, the HMO, as a licensed HMO in California, employs an underwriter and contracts with an actuary to calculate the appropriate premiums that it charges to employers who purchase group HMO contracts from the HMO. According to the Applicant, this analysis involves a study of industry trends and also the particular demographics of the employer's workforce and, for a continuing employer, such as Sharp, a review of the historic experience that the HMO has had with the employer's population. Based on this underwriting analysis, premiums are set for a contract year.<sup>6</sup>

In addition, the Applicant states that it also conducts its own survey of premiums that are being paid for HMO coverage by other San Diego area hospitals, using the services of third-party benefit consultants to conduct these surveys.<sup>7</sup> The Applicant explains that, under these third party surveys, each of the large hospitals in San Diego County are anonymously surveyed as to the COBRA rates they are charging.<sup>8</sup> The Applicant maintains that the premiums that have been paid by Sharp to the HMO are within the market price paid by similarly situated employers in San Diego County. Based on these two separate methodologies, Sharp and its individual fiduciaries have concluded that the amount the Plan pays to Sharp for HMO coverage is reasonable and does not exceed the amount that would be paid for similar services in an arm's length transaction between unrelated parties.

The Applicant notes that Sharp will continue with these efforts, going forward, and will commit to hiring an independent third-party consultant each year to issue a formal report. According to the Applicant, the consultant will determine whether the amount employees and/or their dependents pay for coverage is reasonable and does not exceed the amount that would have

<sup>6</sup> The Applicant also notes that Sharp has historically paid a majority of the Plan's premiums that are paid to the HMO and employee contributions have always constituted less than half of the cost of coverage.

<sup>7</sup> As stated above, Sharp has previously employed the firms of Keenan and Associates and SDH Consultants to conduct these surveys.

<sup>8</sup> Sharp officials believe that surveying COBRA premiums charged by other large hospitals in the San Diego County area will give an "apples-to-apples" comparison of premiums that are actually being paid by employers with similar demographics to Sharp, since, under COBRA, the "applicable premium" is the cost or 102% of the cost actually paid by the employer for such coverage.

been paid for similar services in an arm's length transaction between unrelated parties. This amount will include the cost of co-payments and other out-of-pocket expenses for such coverage borne by participants and/or their dependents, and copies of the certification will be distributed to Plan participants along with summaries of health care costs for similar, competing health care providers.

The Applicant states that if the proposed exemption is granted, the Board of Directors of Sharp will appoint a committee (the Plan Committee) consisting of the Senior Vice President and General Counsel, the Senior Vice President and Chief Financial Officer, and the Vice President, Compensation and Benefits, and such other representatives as the Board may deem appropriate, which will annually ascertain and certify in writing that the above requirements of this proposed exemption, if granted, continue to be met.

### 5. Merits of the Covered Transactions

The Applicant states that the covered transactions are in the interest of the Plan and its participants and beneficiaries. The Applicant maintains that the covered transactions allow the Plan to provide quality medical coverage to its participants at a lower price and in a manner that harmonizes with the business practices of employers who are in the insurance and health care industry. Sharp maintains that participants in the Plan pay for less than half of the Plan's cost for coverage under the HMO and by electing coverage under the HMO, participants have access to a wide range of high quality Sharp and non-Sharp affiliated health care providers.<sup>9</sup> Furthermore, if the exemption is denied, the Applicant maintains that the Plan and its participants and beneficiaries will lose their coverage under the HMO and will no longer be able to use Sharp providers, creating a hardship for the many Sharp employees who have demonstrated a preference for being treated in Sharp's health care system.

The Applicant represents that the savings garnered from the HMO's efficiencies of scale, and the lack of need for commissions, redounds to the benefit of Plan participants. In this regard, the Applicant explains that there

<sup>9</sup> The Applicant notes that Plan participants in the HMO are able to select any health care provider in the HMO's network, regardless of whether they are affiliated with Sharp, but in an HMO (rather than a Preferred Provider Organization) participants are not allowed to select health care providers outside the HMO's network, except in case of emergency.

is no need to retain a broker and pay a commission for the retention of the Plan's HMO coverage. Additionally, since the HMO also covers the health plans of other employers, Sharp is able to achieve economies of scale on its risk, claims processing, administration and health care provider capitation costs that further drive down the overall cost of Plan medical benefits for employees under the Plan.

Moreover, the Applicant represents that an exemption, if granted, would be administratively feasible because the covered transactions are standard for employers who are in the insurance and health care industry. The Applicant also observes that, because the HMO is a fully licensed HMO carrier whose claims processing activities are subject to regulation and periodic review by the California Department of Managed Health Care, no third party audit of its claims processing is necessary.<sup>10</sup> Finally, the Applicant states that Sharp has complied with, and will continue to comply with the conditions of PTE 79-41 (with the exception of the affiliation requirement).

#### Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the Applicant and the Department within 3 days of the date of publication in the **Federal Register**. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 33 days of the publication of the notice of proposed exemption in the **Federal Register**.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest from certain other provisions of ERISA, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA, which, among other things, require a fiduciary to discharge his

duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of ERISA;

(2) Before an exemption may be granted under section 408(a) of ERISA, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the proposed exemption.

#### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), as follows:

##### Section I. Covered Transactions

A. If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act shall not apply, effective August 1, 2006 through and until the date of publication in the **Federal Register** of a final grant of exemption, to the purchase of health insurance by the Sharp HealthCare Health and Dental Plan (the Plan) from the Sharp Health Plan (the HMO), provided that the conditions of Section II have been met.

B. If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act shall not apply, effective as of the date of publication in the **Federal Register** of a final grant of exemption, to the purchase of health insurance by the Plan from the HMO, provided that the conditions of Section II and Section III are met.

##### Section II. General Conditions

(a) Sharp is the sole member of the HMO, and more than 50% of the appointment power for the HMO's Board of Directors is held by Sharp.

(b) Sharp is licensed to sell HMO coverage in the State of California.

(c) The HMO is certified by the California Department of Managed Health Care as being in compliance with the requirements for a licensed HMO within the last 18 months.

(d) The HMO has undergone a financial examination by the California Department of Managed Health Care within the past 5 years and will continue to undergo such financial examinations at least once every five years.

(e) The HMO has been, and will continue to be, examined by an independent certified public accountant annually.

(f) The amount the Plan pays to Sharp for HMO coverage is reasonable and does not exceed the amount the Plan would have paid for similar services in an arm's length transaction between unrelated parties.

(g) All HMO-offered health care providers meet all applicable licensure requirements and certifications.

(h) The HMO offers a sufficient number of non-Sharp affiliated health care providers to effectively allow Plan participants the opportunity to receive health care services from either Sharp or non-Sharp affiliated health care providers.

(i) No commissions are paid by the Plan with respect to the sale of HMO coverage.

(j)(i) With respect to the relief provided in section I. A., for each taxable year of the HMO, the gross premiums received in that taxable year by the HMO from the Plan did not exceed 50% of the gross premiums received by the HMO for all HMO coverage issued in that taxable year; or (ii) with respect to the relief provided in section I. B., for each taxable year of the HMO, the gross premiums received in that taxable year by the HMO from the Plan will not exceed 50% of the gross premiums received by the HMO for all HMO coverage issued in that taxable year.

(k) Sharp maintains or causes to be maintained for a period of six years from the date of any covered transaction hereunder such records as are necessary to enable the persons described in paragraph (l)(i) below to determine whether the conditions of this proposed exemption, if granted, have been met, provided that (i) a separate prohibited transaction will not be considered to

<sup>10</sup>The Applicant notes that the Department of Managed Health Care also reviews and approves all HMO provisions for compliance with its rules and regulations.

have occurred if, due to circumstances beyond the control of Sharp, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than Sharp shall be subject to a civil penalty that may be assessed under section 502(i) of the Act, if such records are not maintained, or are not available for examination as required by paragraph (l)(i) below.

(l)(i) Except as provided below in paragraph (l)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department,

(B) Any duly authorized representative of the California Department of Managed Health Care or any State or Federal governmental body responsible for regulatory oversight of Sharp or the HMO, and

(C) Any fiduciary of the Plan or the Plan's authorized representative; and (ii) None of the persons described above in paragraph (l)(i)(C) shall be authorized to examine trade secrets of Sharp, or commercial or financial information which is privileged or confidential, and should Sharp refuse to disclose information on the basis that such information is exempt from disclosure, Sharp shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

### Section III. Prospective Conditions

(a) Sharp retains annually the services of an independent third-party consultant to determine whether the amount employees and/or their dependents pay for coverage is reasonable and does not exceed the amount that would be paid for similar services in an arm's length transaction between unrelated parties, which amount includes the cost of co-payments and other out-of-pocket expenses for such coverage borne by participants and/or their dependents, and written copies of such determination are distributed to Plan participants along with summaries of health care costs for similar, competing health care providers.

(b) The Board of Directors of Sharp appoints a committee (the Plan Committee) consisting of the Senior Vice President and General Counsel, the Senior Vice President and Chief Financial Officer, the Vice President, Compensation and Benefits, and such

other representatives as the Board of Directors may deem appropriate. The Plan Committee will annually ascertain and certify in writing that the above requirements of this proposed exemption, if granted, continue to be met.

Signed at Washington, DC, this 17th day of August, 2012.

**Lyssa E. Hall,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 2012-21158 Filed 8-27-12; 8:45 am]

**BILLING CODE 4510-29-P**

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting

**DATE AND TIME:** The Legal Services Corporation's Board of Directors will meet telephonically on August 31, 2012. The meeting will commence at 11 a.m., Eastern Daylight Time, and will continue until the conclusion of the Board's agenda.

**LOCATION:** F. William McCalpin Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

**PUBLIC OBSERVATION:** Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold. From time to time, the presiding Chair may solicit comments from the public.

#### CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1-866-451-4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please immediately "MUTE" your telephone.

**STATUS OF MEETING:** Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to discuss a candidate for the position of Vice President for Grants Management. A verbatim written transcript will be made of the closed session of the Board of Directors meeting. The transcript of any portion of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), and the corresponding provision of the Legal Service's Corporation's implementing regulations, 45 CFR 1622.5(e), will not be available for

public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

### Matters To Be Considered

#### Open Session

1. Approval of agenda
2. Approval of minutes of the Board's meeting of July 27, 2012
3. Consider and act on the Finance Committee's recommendation to the Board on the appropriations request for FY 2014 (Resolution 2012-XXX)
4. Consider and act on the Strategic Plan
5. Consider and act on a resolution abolishing the Office of Vice President for Programs and Performance and establishing the Office of Vice President for Grants Management (Resolution 2012-XXX)
6. Consider and act on whether to authorize an executive session of the Board

#### Closed Session

7. Discussion of candidate for the Office of Vice President for Grants Management

#### Open Session

8. Consider and act on a resolution on the appointment of a Vice President for Grants Management (Resolution 2012-XXX)
9. Public comment
10. Consider and act on other business
11. Consider and act on motion to adjourn the meeting

#### CONTACT PERSON FOR INFORMATION:

Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295-1500. Questions may be sent by electronic mail to [FR\\_NOTICE\\_QUESTION@lsc.gov](mailto:FR_NOTICE_QUESTION@lsc.gov).

#### NON-CONFIDENTIAL MEETING MATERIALS:

Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC Web site, at <http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session>.

**ACCESSIBILITY:** LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295-1500 or [FR\\_NOTICE\\_QUESTION@lsc.gov](mailto:FR_NOTICE_QUESTION@lsc.gov), at least 2 business days in advance of the

meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: August 24, 2012.

**Victor M. Fortuno,**

*Vice President & General Counsel.*

[FR Doc. 2012-21305 Filed 8-24-12; 4:15 pm]

**BILLING CODE 7050-01-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[12-069]

### NASA Advisory Council; Commercial Space Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Tuesday, September 18, 2012, 11:45 a.m.–5:30 p.m.; Local Time.

**ADDRESSES:** NASA Ames Research Center (ARC), The Showroom, Building M-3, NASA Ames Conference Center, 500 Severys Road, NASA Research Park, Moffett Field, CA 94035-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas W. Rathjen, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-0552, fax (202) 358-2885, or [thomas.rathjen-1@nasa.gov](mailto:thomas.rathjen-1@nasa.gov).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number (888) 790-5969 or toll number (517) 224-3265, pass code 7234039#, to participate in this meeting by telephone. The WebEx link is <https://nasa.webex.com/>, the meeting number is 996 244 419, and the password is CSC@Sep18. The agenda for the meeting includes the following topics:

- Assessment of Commercial Suborbital Market
- Overview of Commercial Crew Integrated Capability Agreements
- Ames Research Center's Commercial Space Activities and Plans
- Dryden Flight Research Center's Commercial Space Activities and Plans

—Jet Propulsion Laboratory's Commercial Space Activities and Plans

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be required to comply with NASA security procedures, including the presentation of a valid picture ID. Visitors must show a valid State or Federal issued picture ID, green card, or passport to enter into the NASA Research Park, and must state they are attending the NASA Advisory Council Commercial Space Committee session in The Showroom, Building M-3. All U.S. citizens and green card holders desiring to attend must provide their full name, company affiliation (if applicable), and citizenship to Thomas Rathjen via email at [thomas.rathjen-1@nasa.gov](mailto:thomas.rathjen-1@nasa.gov) by telephone at (202) 358-0552 no later than the close of business September 7, 2012. Permanent Residents will need to show residency status (valid green card) and a valid, officially issued picture identification such as a driver's license and must state they are attending the Commercial Space Committee session in The Showroom, Building M-3. Foreign Nationals must submit, no less than 15 working days (by September 1, 2012) prior to the meeting, their full name, gender, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number and expiration date, U.S. Social Security Number (if applicable), and an electronically scanned or faxed copy of their passport and visa to Thomas Rathjen, Executive Secretary, Commercial Space Committee, via email at [thomas.rathjen-1@nasa.gov](mailto:thomas.rathjen-1@nasa.gov) or fax (202) 358-2885.

**Patricia D. Rausch,**

*Advisory Committee Management Officer,  
National Aeronautics and Space Administration.*

[FR Doc. 2012-21181 Filed 8-27-12; 8:45 am]

**BILLING CODE P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 150-00017; NRC-2012-0200]

### In the Matter of Quality Inspection and Testing, Inc., New Iberia, LA; General License Pursuant to 10 CFR 150.20 EA-11-124; Confirmatory Order (Effective Immediately)

I

Quality Inspection & Testing, Inc. (QIT), is the holder of a general license

issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to § 150.20 of Title 10 of the *Code of Federal Regulations* (10 CFR). This general license was granted to QIT at various times during calendar years 2010 and 2011. This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on June 27, 2012, at the NRC Region IV office in Arlington, Texas.

II

On October 27, 2010, the NRC conducted an inspection at a temporary job site located near Rock Springs, Wyoming. As a result of this inspection, QIT conducted an internal investigation and reported the results to the NRC in a letter dated January 27, 2011 (ML110940552). In response to QIT's investigation results, the NRC issued a Confirmatory Action Letter (CAL-4-11-001) on February 11, 2011 (ML110420261). QIT responded to the Confirmatory Action Letter in a letter dated February 15, 2011 (ML110530442). In addition, the NRC Office of Investigations (OI), Region IV, conducted an investigation (Case 4-2011-031).

By letter dated June 5, 2012, the NRC transmitted the results of the inspection and investigation in NRC Inspection Report 150-00017/2010-004 and Investigation Report 4-2011-031 [Reference redacted, not publicly available]. Based on the results of the inspection and investigation, the NRC determined that four apparent violations of NRC requirements had occurred. The apparent violations involved failure to: (1) Control and maintain constant surveillance of licensed material that is not in storage as required by 10 CFR 20.1802; (2) comply with security-related requirements as discussed in the Appendix to this Order; (3) wear, on the trunk of the body, a direct reading dosimeter, operating alarm ratemeter and a personal dosimeter while conducting radiographic operations in accordance with the requirements of 10 CFR 34.47(a); and (4) maintain copies of the specified records and documents required at a temporary jobsite as required by 10 CFR 34.89(b). Furthermore, the NRC is concerned that willfulness may be associated with the first three apparent violations. Finally, the inspection and investigation evidence also provided the basis for NRC identified apparent security violations of NRC requirements. The violations are described in the Appendix to this Order. (The Appendix includes Security-Related information; therefore, it is not publicly available.)

In the June 5, 2012, letter, the NRC informed QIT that the NRC was considering escalated enforcement action for the apparent violations. The NRC offered QIT the opportunity to request a predecisional enforcement conference (PEC) or request alternative dispute resolution (ADR) with the NRC in an attempt to resolve issues associated with this matter. In response, on June 13, 2012, QIT requested ADR to resolve this matter with the NRC.

On June 27, 2012, the NRC and QIT representatives met in an ADR session with a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

### III

In response to the NRC's offer, QIT requested use of the NRC ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following.

The NRC recognizes the corrective actions associated with the apparent violations that QIT has already implemented, which include:

- Conducting an internal investigation into the issues identified by the NRC, and documenting the results of that investigation in a letter to the NRC dated January 27, 2011 (ML110940552).
- Appointing a full-time radiation safety officer (RSO) for QIT's Northwest Region on December 3, 2010, and giving the RSO full authority to enforce the QIT radiation safety program for personnel in the region.
- Holding a meeting with all radiography personnel promptly after the NRC inspection to communicate the inspection findings.
- Amending radiography policies and procedures to require the RSO to ensure all vehicles used in radiographic operations are equipped with the required documents and equipment prior to use.
- Retraining and testing all radiography personnel on QIT's Operating and Emergency Procedures, with emphasis on the duties and responsibilities of radiographers, dosimetry requirements, and a security-related issue discussed in the Appendix to this Confirmatory Order.
- Conducting weekly field audits to ensure employees follow the required

company, state, and federal requirements.

- Granting "stop-work" authority to all radiography personnel who identify that radiography is being conducted in violation of the requirements.

QIT also agreed to take the following actions to address the apparent violations:

A. Within 30 days of the date of the Confirmatory Order, QIT will issue a company policy statement to its employees regarding how unacceptable deliberate violations are, the importance of maintaining security over licensed material, and the ethics of complying with regulatory requirements. A copy of the policy statement will be provided to the NRC.

B. Within 30 days of the date of the Confirmatory Order, the president of QIT will issue a personal letter to employees regarding his expectations in identifying and communicating concerns to QIT management, as well as overall compliance with NRC regulations.

### C. Training Requirements

QIT will enhance its training program for employees conducting radiographic operations. The goal of the changes is to conduct licensed operations safely and to deter future deliberate violations by ensuring that employees (including licensee managers) understand the importance the NRC places on violations associated with deliberate misconduct and careless disregard. The program will consist of training for all current and newly hired employees performing licensed activities and provide for annual refresher training. QIT will complete the following activities in support of the training program:

#### 1. Training for Current Employees.

(a) Within 60 days of the date of the Confirmatory Order, QIT will contract with an external contractor to assist in the development of a QIT training program regarding the NRC Enforcement process. The external contractor will work with a QIT management representative. This QIT training program will address, at a minimum, the types of willfulness (careless disregard and deliberate misconduct), the potential criminal sanctions that the Department of Justice may take, and the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct. The QIT management representative, who participated in the development of the program, will retain responsibility for providing training based on the program

to all QIT employees who engage in NRC-licensed activities.

(b) At least 15 days before the time that QIT intends to execute the contract with the external contractor, QIT will submit for NRC review and approval, the resume of the contractor proposed to develop and perform the training described in Item C.1.a. above.

(c) At least 15 days prior to the start of training, but no later than 30 days after executing the contract with the external training contractor, QIT will submit for NRC review and approval an outline of the topics to be covered during the training session. The training will include the topics identified in Section C.3. of the Confirmatory Order.

(d) The training for managers will be completed within 60 days of the NRC's approval of the outline of the course topics. The training for managers will be provided by the external contractor. The training for current employees will be completed within 120 days of the NRC's approval of the outline of the course topics.

(e) QIT will assess the effectiveness of the training through written testing. Any employee that does not pass the test will receive remedial training and be retested. Within 30 days of completing the training for all current employees, QIT will provide to the NRC: (1) A letter stating that the training as specified is complete and (2) the results of the employee testing process.

#### 2. Training for New Employees and Annual Refresher

Within 120 days of the date of the Confirmatory Order, QIT will submit for NRC approval, the training program described in sections C.1 and C.3 along with associated procedure(s) that describe the initial training which must be provided to new employees who will be conducting NRC licensed activities and the annual refresher training that will be conducted for those employees who are performing NRC licensed activities. The submittal to the NRC will include: (1) An outline of the topics to be covered during the initial training and the refresher training sessions, (2) any procedure(s) that provide guidance on how the training program is conducted, and (3) details of the testing that will be conducted to evaluate the effectiveness of the training.

#### 3. Training Program Requirements

The contractor identified in C.1 will also make enhancements to QIT's established training program. The training procedures for the current employees, new employees and annual refresher training will be modified to include the following elements:

(a) A discussion of the NRC's policy statement on safety culture [76 FR 34773] and QIT management's support of that policy. Employees will be provided a copy of NUREG/BR-0500, "Safety Culture Policy Statement."

(b) Elements of willfulness discussed in Chapter 6 of the NRC Enforcement Manual, including examples of enforcement actions that the NRC has taken against individuals (publicly available on the NRC's Web site).

(c) Potential criminal sanctions that the Department of Justice may take against individuals for deliberate misconduct.

(d) Requirements of 10 CFR 30.10, "Deliberate Misconduct"; and 10 CFR 30.7 "Employee Protection."

(e) Instruction on the importance of understanding and following QIT's internal procedures and the regulatory requirements associated with radiographic operations.

(f) Discussion on when to suspend work activities and to verify whether specific circumstances call for implementing corrective actions and resuming work activities or stopping work activities in order to protect the health and safety of the workers and the public.

(g) The importance of having the required documents (Operating & Emergency procedures, shipping papers, copies of regulations, etc.) with the radiography equipment when working at temporary jobsites.

4. Recordkeeping Requirements. QIT will maintain training records, including attendees and the test results for 5 years. The records will be available for NRC review when requested.

#### *D. Revise Operating & Emergency (O&E) Procedures*

Within 90 days of the issuance date of the Confirmatory Order, QIT will develop and submit to NRC for review and approval:

1. A procedure that provides details on how QIT management and the corporate RSO will provide oversight of the Regional RSO(s).

2. A security-related procedure that is discussed in the Appendix to the Order.

3. A procedure for various ways for employees to report concerns, including implementation of an open door policy.

4. A security-related provision that is discussed in the Appendix to the Order.

5. Audit records must be maintained for five years and include the following information: date of audit, name of person conducting the audit, name of persons contacted by auditor, audit findings, corrective actions and follow-up (if any).

E. Within 30 days after QIT receives the NRC reviewed and approved procedures specified in sections C and D of the Order, QIT shall implement and comply with the approved procedures when performing work under NRC jurisdiction. The approved procedures and any subsequent procedural revisions will remain binding upon QIT when performing work under NRC jurisdiction for a period of 10 years from the date of the Confirmatory Order.

F. Within 180 days of the date of the Confirmatory Order, the president of QIT must submit a paper for presentation at an NDT professional society meeting (national or local chapter), such as the Non-Destructive Testing Management Association (NDTMA) relating the actions that resulted in escalated enforcement and the corrective measures that QIT has taken or plans to take to prevent recurrence.

G. Within 30 days of the date of the Confirmatory Order, QIT must pay a civil penalty of \$3,500. Payment must be made in accordance with payment methods described in NUREG/BR-0254, "Payment Methods." QIT will submit a statement indicating when and by what method payment was made to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

On August 8, 2012, the Licensee consented to issuing this Order with the commitments, as described in Section V below. Quality Inspection and Testing, Inc., further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

#### **IV**

Since Quality Inspection and Testing, Inc. (QIT), has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that the QIT commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the QIT commitments be confirmed by this Order. Based on the above and QIT's consent, this Confirmatory Order is immediately effective upon issuance.

#### **V**

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10

CFR 2.202 and 10 CFR parts 20, 30, and 34, *it is hereby ordered, effective immediately, that:*

A. Within 30 days of the date of the Confirmatory Order, QIT will issue a company policy statement to its employees regarding how unacceptable deliberate violations are, the importance of maintaining security over licensed material, and the ethics of complying with regulatory requirements. A copy of the policy statement will be provided to the NRC.

B. Within 30 days of the date of the Confirmatory Order, the president of QIT will issue a personal letter to employees regarding his expectations in identifying and communicating concerns to management, as well as overall compliance with NRC regulations.

C. QIT will enhance its training program for employees conducting radiographic operations. The goal of the changes is to conduct licensed operations safely and deter future deliberate violations by ensuring that employees (including licensee managers) understand the importance the NRC places on violations associated with deliberate misconduct and careless disregard. The program will consist of training for all current and newly hired employees performing licensed activities and provide for annual refresher training. QIT will complete the following activities in support of the training program:

##### *1. Training for Current Employees*

(a) Within 60 days of the date of the Confirmatory Order, QIT will contract with an external contractor to assist in the development of a QIT training program regarding the NRC Enforcement process. The external contractor will work with a QIT management representative. This QIT training program will address all of the elements in condition C.3 below and, at a minimum, the types of willful violations, the types of willfulness (careless disregard and deliberate misconduct), the potential criminal sanctions that the Department of Justice may take, and the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct. As discussed in Item C.1.d, the contractor will provide training to all QIT managers. The QIT management representative, who participated in the development of the program, will retain responsibility for providing training based on the program to all QIT employees who engage in NRC-licensed activities.

(b) At least 15 days before the time that QIT intends to execute the contract

with the external contractor, QIT will submit for NRC review and approval, the resume of the contractor proposed to develop and perform the training described in Item C.1.a. above.

(c) At least 15 days prior to the start of training, but no later than 30 days after executing the contract with the external training contractor, QIT will submit for NRC review and approval an outline of the topics to be covered during the training session. The training will include the topics identified in Section C.3. of the Confirmatory Order.

(d) The training for managers will be completed within 60 days of the NRC's approval of the outline of the course topics. The training for managers will be provided by the external contractor. The training for current employees will be completed within 120 days of the NRC's approval of the outline of the course topics.

(e) QIT will assess the effectiveness of the training through written testing. Any employee that does not pass the test will receive remedial training and be retested. Within 30 days of completing the training for all current employees, QIT will provide to the NRC: (1) A letter stating that the training as specified is complete and (2) the results of the employee testing process (such as total number of employees who took the training and whether any did not pass even after remedial training).

## 2. Training for New Employees and Annual Refresher

Within 120 days of the date of the Confirmatory Order, QIT will submit for NRC approval, the training program described in sections C.1 and C.3 along with associated procedure(s) that describe the initial training which must be provided to new employees who will be conducting NRC licensed activities and the annual refresher training that will be conducted for those employees who are performing NRC licensed activities. The submittal to the NRC will include: (1) An outline of the topics to be covered during the initial training and the refresher training sessions, (2) any procedure(s) that provide guidance on how the training program is conducted, and (3) details of the testing that will be conducted to evaluate the effectiveness of the training.

3. The contractor identified in section C.1 will also make enhancements to QIT's established training program. The training procedures for the current employees, new employees and annual refresher training will be modified to include the following elements:

a. A discussion of the NRC's policy statement of safety culture [76 FR 34773] and QIT management's support

of that policy. Employees will be provided a copy of NUREG/BR-500, "Safety Culture Policy Statement."

b. Elements of willfulness discussed in Chapter 6 of the NRC Enforcement Manual including examples of enforcement actions that the NRC has taken against individuals (publically available on the NRC's Web site).

c. Potential criminal sanctions that the Department of Justice may take against individuals for deliberate misconduct.

d. Requirements of 10 CFR 30.10, "Deliberate misconduct"; and 10 CFR 30.7, "Employee protection."

e. Instruction on the importance of understanding and following QIT's internal procedures and the regulatory requirements associated with radiographic operations.

f. Discussion on when to suspend work activities and to verify whether specific circumstances call for implementing corrective actions and resuming work activities or stopping work activities in order to protect the health and safety of the workers and the public.

g. The importance of having the required documents (Operating & Emergency procedures, shipping papers, copies of regulations, etc.) with the radiography equipment when working at temporary jobsites.

4. Recordkeeping Requirements. QIT will maintain training records, including attendees and the test results for 5 years. The records will be available for NRC review when requested.

## D. Revise Operating & Emergency (O&E) Procedures

Within 90 days of the issuance date of the Confirmatory Order, QIT will develop and submit to the NRC for review and approval procedures that address the following items:

1. A procedure that provided details on how QIT management and the corporate RSO will provide oversight of the Regional RSO(s).

2. This provision involves field audits of security requirements and contains security-related information which is described in the security-related Appendix to this Order (not publicly available).

3. A procedure for various ways for employees to report concerns, including implementation of an open door policy.

4. This provision discusses how field audits of security requirements are to be conducted and contains security-related information which is described in the security-related Appendix to this Order (not publicly available).

5. A procedure that requires that audit records must be maintained for 5 years

and include the following information: date of audit, name of person conducting the audit, name of persons contacted by the auditor, audit findings, corrective actions and follow-up (if any).

E. Within 30 days after QIT receives the NRC reviewed and approved procedures specified in sections C and D, QIT shall implement and comply with the approved procedures when performing work under NRC jurisdiction. The approved procedures and any subsequent procedural revisions will remain binding upon QIT when performing work under NRC jurisdiction for a period of 10 years from the date of the confirmatory order.

F. Within 180 days of the date of the Confirmatory Order, the president of QIT must submit a paper for presentation at an NDT professional society meeting (national or local chapter), such as the Non-Destructive Testing Management Association (NDTMA) relating the actions that resulted in escalated enforcement and the corrective measures that QIT has taken or plan to take to prevent recurrence. The president of QIT will provide NRC with a copy of the paper at the same time he submits it to an NDT professional society, by mailing the copy to: US NRC Region IV, ATTN: Director, Division of Nuclear Material Safety, 1600 Lamar Blvd., Arlington, Texas 76011.

G. Within 30 days of the date of the Confirmatory Order, QIT must pay a civil penalty of \$3,500. Payment must be made in accordance with payment methods described in NUREG/BR-0254, "Payment Methods." QIT will submit a statement indicating when and by what method payment was made to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

H. Unless otherwise specified, all documents required to be submitted to the NRC will be sent to: US NRC Region IV, ATTN: Director, Division of Nuclear Material Safety, 1600 Lamar Blvd., Arlington, Texas 76011.

The Regional Administrator, Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by Quality Inspection and Testing, Inc., of good cause.

## VI

Any person adversely affected by this Confirmatory Order, other than Quality Inspection and Testing, Inc. (QIT), may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending

the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to request (1) a digital identification ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to

offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852-2738, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than Quality Inspection and Testing, Inc.) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any

hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 10th day of August 2012.

For the Nuclear Regulatory Commission.

**Elmo E. Collins,**

*Regional Administrator, NRC Region IV.*

[FR Doc. 2012-21214 Filed 8-27-12; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2012-0002]

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATE:** Weeks of August 27, September 3, 10, 17, 24, October 1, 2012.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

#### Week of August 27, 2012

There are no meetings scheduled for the week of August 27, 2012.

#### Week of September 3, 2012—Tentative

There are no meetings scheduled for the week of September 3, 2012.

#### Week of September 10, 2012—Tentative

*Tuesday, September 11, 2012*

9:00 a.m. Briefing on Economic Consequences (Public Meeting)  
(Contact: Richard Correia, 301-251-7430).

This meeting will be webcast live at the Web address—[www.nrc.gov](http://www.nrc.gov).

*Friday, September 14, 2012*

11:00 a.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6).

#### Week of September 17, 2012—Tentative

There are no meetings scheduled for the week of September 17, 2012.

#### Week of September 24, 2012—Tentative

*Tuesday, September 25, 2012*

9:30 a.m. Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting)  
(Contact: Donna Williams, 301-415-1322).

This meeting will be webcast live at the Web address—[www.nrc.gov](http://www.nrc.gov).

#### Week of October 1, 2012—Tentative

There are no meetings scheduled for the week of October 1, 2012.

\* \* \* \* \*

\*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301-415-1292. Contact person for more information: Rochelle Bavol, 301-415-1651.

\* \* \* \* \*

The NRC Commission Meeting Schedule can be found on the Internet at:<http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301-415-6200, TDD: 301-415-2100, or by email at [william.dosch@nrc.gov](mailto:william.dosch@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an email to [darlene.wright@nrc.gov](mailto:darlene.wright@nrc.gov).

Dated: August 23, 2012.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2012-21287 Filed 8-24-12; 4:15 pm]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Request To Amend a License to Import Radioactive Waste

Pursuant to 10 CFR 110.70 (b) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission (NRC) has received the following request to amend an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <http://www.nrc.gov/reading-rm.html> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV), or by calling (301) 415-1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this export license application follows.

**NRC IMPORT LICENSE APPLICATION**  
[Description of Material]

Name of applicant date of application date received application No. docket No.	Material type	Total quantity	End use	Country from
Perma-Fix Northwest, Inc. July 27, 2012 July 31, 2012 IW022/02 11005700.	Class A radioactive waste including various materials (e.g., wood, metal, paper, cloth, concrete, rubber, plastic, liquids, aqueous-organic fluids, animal carcasses, and human-animal waste) contaminated with radionuclides during licensed activities; e.g., routine operations, maintenance, equipment use decontamination, remediation, and decommissioning.	Up to a maximum total of 5,500 tons or about 1,000 tons metal, 4,000 tons dry activity material, and 500 tons liquid, contaminated with various radionuclides in varying combinations. Activity levels will not exceed licensee possession limits, and materials will be handled in accordance with all U.S. federal and state regulations.	Recycling for beneficial reuse and processing for volume reduction via thermal and non-thermal treatment. Liquids to be recycled. Non-conforming materials and/or radioactive waste that is attributed to Canadian suppliers, will be returned per appropriate NRC export license (Ref. XW012), and will not remain in the U.S. Amend to: (1) Extend expiration date from August 30, 2012 to September 30, 2017; (2) change the name of Zircotec Precision Industries, Inc., to Cameco Fuel Manufacturing; and (3) add two "Foreign Suppliers" which are both subsidiaries of Cameco in Canada.	Canada.

Dated this 17th day of August 2012 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

**Mark R. Shaffer,**

*Deputy Director, Office of International Programs.*

[FR Doc. 2012-21195 Filed 8-27-12; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Request To Amend a License To Export Radioactive Waste

Pursuant to 10 CFR 110.70 (b) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission (NRC) has received the following request to amend an export license. Copies of the request are available electronically through ADAMS and can be accessed through

the Public Electronic Reading Room (PERR) link <http://www.nrc.gov/reading-rm.html> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing

electronically is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV), or by calling (301) 415-1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this export license application follows.

## NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No., Docket No., Description of material	Material type	Total quantity	End use	Country of destination
Perma-Fix Northwest, Inc., July 27, 2012, July 31, 2012, XW012/02, 11005699.	Class A radioactive waste including various materials (e.g., wood, metal, paper, cloth, concrete, rubber, plastic, liquids, aqueous-organic fluids, animal carcasses, and human-animal waste) contaminated with radionuclides during licensed activities; e.g., routine operations, maintenance, equipment use, decontamination, remediation, and decommissioning	Up to a maximum total of 5,500 tons or about 1,000 tons metal, 4,000 tons dry activity material, and 500 tons liquid, contaminated with various radionuclides in varying combinations. Activity levels will not exceed licensee possession limits, and materials will be handled in accordance with all U.S. federal and state regulations	Non-conforming materials and/or radioactive waste that is attributed to Canadian suppliers, will be returned per appropriate NRC export license (Ref. IW022), and will not remain in the U.S.  Amend to: (1) extend expiration date from August 30, 2012 to September 30, 2017; (2) change the name of Zircotec Precision Industries, Inc., to Cameco Fuel Manufacturing; and (3) add two Ultimate Foreign Consignee(s) which are both subsidiaries of Cameco in Canada.	Canada.

Dated this 17th day of August 2012 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

**Mark R. Shaffer,**

*Deputy Director, Office of International Programs.*

[FR Doc. 2012-21198 Filed 8-27-12; 8:45 am]

**BILLING CODE 7590-01-P**

SW., Washington, DC 20260-1000.  
Telephone (202) 268-4800.

**Julie S. Moore,**  
*Secretary.*

[FR Doc. 2012-21346 Filed 8-24-12; 4:15 pm]

**BILLING CODE 7710-12-P**

that has custody of client funds or securities to maintain those client funds or securities with a broker-dealer, bank or other "qualified custodian."<sup>1</sup> The rule requires the adviser to promptly notify clients as to the place and manner of custody, after opening an account for the client and following any changes.<sup>2</sup> If an adviser sends account statements to its clients, it must insert a legend in the notice and in subsequent account statements sent to those clients urging them to compare the account statements from the custodian with those from the adviser.<sup>3</sup> The adviser also must have a reasonable basis, after due inquiry, for believing that the qualified custodian maintaining client funds and securities sends account statements directly to the advisory clients, and undergo an annual surprise examination by an independent public accountant to verify client assets pursuant to a written agreement with the accountant that specifies certain duties.<sup>4</sup> Unless client assets are maintained by an independent custodian (*i.e.*, a custodian that is not the adviser itself or a related person), the adviser also is required to obtain or receive a report of the internal controls relating to the custody of those assets from an independent public accountant that is registered with and subject to regular inspection by the Public Company Accounting Oversight Board ("PCAOB").<sup>5</sup>

The rule exempts advisers from the rule with respect to clients that are registered investment companies. Advisers to limited

## POSTAL SERVICE

### Board of Governors; Sunshine Act Meeting

**DATES AND TIMES:** Thursday, September 13, 2012, at 10:00 a.m.

**PLACE:** Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., in the Benjamin Franklin Room.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

*Thursday, September 13, at 10:00 a.m. (Closed).*

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

#### CONTACT PERSON FOR MORE INFORMATION:

Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213

#### Extension:

Rule 206(4)-2; SEC File No. 270-217; OMB Control No. 3235-0241.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 206(4)-2 (17 CFR 275.206(4)-2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) governs the custody of funds or securities of clients by Commission-registered investment advisers. Rule 206(4)-2 requires each registered investment adviser

<sup>1</sup> Rule 206(4)-2(a)(1).

<sup>2</sup> Rule 206(4)-2(a)(2).

<sup>3</sup> Rule 206(4)-2(a)(2).

<sup>4</sup> Rule 206(4)-2(a)(3), (4).

<sup>5</sup> Rule 206(4)-2(a)(6).

partnerships, limited liability companies and other pooled investment vehicles are excepted from the account statement delivery and deemed to comply with the annual surprise examination requirement if the limited partnerships, limited liability companies or pooled investment vehicles are subject to annual audit by an independent public accountant registered with, and subject to regular inspection by the PCAOB, and the audited financial statements are distributed to investors in the pools.<sup>6</sup> The rule also provides an exception to the surprise examination requirement for advisers that have custody because they have authority to deduct advisory fees from client accounts and advisers that have custody solely because a related person holds the adviser's client assets and the related person is operationally independent of the adviser.<sup>7</sup>

Advisory clients use this information to confirm proper handling of their accounts. The Commission's staff uses the information obtained through this collection in its enforcement, regulatory and examination programs. Without the information collected under the rule, the Commission would be less efficient and effective in its programs and clients would not have information valuable for monitoring an adviser's handling of their accounts.

The respondents to this information collection are investment advisers registered with the Commission and have custody of clients' funds or securities. We estimate that 4,763 advisers would be subject to the information collection burden under rule 206(4)-2. The number of responses under rule 206(4)-2 will vary considerably depending on the number of clients for which an adviser has custody of funds or securities, and the number of investors in pooled investment vehicles that the adviser manages. It is estimated that the average number of responses annually for each respondent would be 6,830, and an average time of 0.01593hour per response. The annual aggregate burden for all respondents to the requirements of rule 206(4)-2 is estimated to be 518,275 hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

<sup>6</sup> Rule 206(4)-2(b)(4).

<sup>7</sup> Rule 206(4)-2(b)(3), (b)(6).

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: August 22, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-21115 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213

#### Extension:

Rule 17Ad-11; SEC File No. 270-261; OMB Control No. 3235-0274.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17Ad-11 (17 CFR 240.17Ad-11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17Ad-11 requires all registered transfer agents to report to issuers and the appropriate regulatory agency in the event that aged record differences exceed certain dollar value thresholds. An aged record difference occurs when an issuer's records do not agree with those of security holders as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. In addition, the rule requires transfer agents to report to the appropriate regulatory agency in the event of a failure to post certificate detail to the master security holder file within five business days of the time required by Rule 17Ad-10 (17 CFR 240.10). Also, transfer agents must maintain a copy of each report prepared under Rule 17Ad-11 for a period of three years following the date of the report. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

Because the information required by Rule 17Ad-11 is already available to transfer agents, any collection burden

for small transfer agents is minimal. Based on a review of the number of Rule 17Ad-11 reports the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation received since 2009, the Commission estimates that 10 respondents will file a total of approximately 12 reports annually. The Commission staff estimates that, on the average, each report requires approximately one-half hour to prepare. Therefore, the Commission staff estimates that the total annual hourly burden to the entire transfer agent industry is approximately six hours (30 minutes multiplied by 12 reports). Assuming an average hourly rate of a transfer agent staff employee of \$25, the average total internal cost of the report is \$12.50. The total annual internal cost of compliance for the approximate 10 respondents is approximately \$150.00 (12 reports × \$12.50).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: August 22, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-21112 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available*

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

#### Extension:

Rule 23c-3 and Form N-23c-3; SEC File No. 270-373; OMB Control No. 3235-0422.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 23c-3 (17 CFR 270.23c-3) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) permits a registered closed-end investment company ("closed-end fund" or "fund") that meets certain requirements to repurchase common stock of which it is the issuer from shareholders at periodic intervals, pursuant to repurchase offers made to all holders of the stock. The rule enables these funds to offer their shareholders a limited ability to resell their shares in a manner that previously was available only to open-end investment company shareholders. To protect shareholders, a closed-end fund that relies on rule 23c-3 must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or, for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the Commission (electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR")) on Form N-23c-3, a filing that provides certain information about the fund and the type of offer the fund is making.<sup>1</sup> The fund must describe in its annual report to shareholders the fund's policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The fund's

<sup>1</sup> Form N-23c-3, entitled "Notification of Repurchase Offer Pursuant to Rule 23c-3," requires the fund to state its registration number, its full name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

board of directors must adopt written procedures designed to ensure that the fund's investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund's portfolio and change the liquidity procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to section 24 of the Investment Company Act (15 U.S.C. 80a-24) and the rules that implement section 24. Rule 24b-3 under the Investment Company Act (17 CFR 270.24b-3), however, exempts the fund from that requirement if the materials are filed instead with the Financial Industry Regulatory Authority ("FINRA").

The requirement that the fund send a notification to shareholders of each offer is intended to ensure that a fund provides material information to shareholders about the terms of each offer. The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund's compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N-23c-3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund's use of repurchase offers. The requirement that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund's repurchase policies and its recent experience. The requirement that the board approve and review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales literature as if it were an open-end fund is intended to facilitate the review of these materials by the Commission or FINRA to prevent incomplete, inaccurate, or misleading disclosure about the special characteristics of a closed-end fund that makes periodic repurchase offers.

Based on staff experience, the Commission staff estimates that 20 funds make use of rule 23c-3 annually, including two funds that are relying upon rule 23c-3 for the first time. The Commission staff estimates that on

average a fund spends 89 hours annually in complying with the requirements of the rule and Form N-23c-3, with funds relying upon rule 23c-3 for the first time incurring an additional one-time burden of 28 hours. The Commission therefore estimates the total annual burden of the rule's and form's paperwork requirements to be 1,836 hours. In addition to the burden hours, the Commission estimates that the average yearly cost to each fund that relies on rule 23c-3 to print and mail repurchase offers to shareholders is approximately \$29,966.50. The Commission estimates total annual cost is therefore approximately \$599,330.

Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule and form is mandatory only for those funds that rely on the rule in order to repurchase shares of the fund. The information provided to the Commission on Form N-23c-3 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: August 22, 2012.

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2012-21113 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

#### *Upon Written Request, Copies Available*

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

#### Extension:

Rule 31a-2; SEC File No. 270-174; OMB Control No. 3235-0179.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 31(a)(1) of the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a-30(a)(1)) requires registered investment companies ("funds") and certain underwriters, broker-dealers, investment advisers, and depositors to maintain and preserve records as prescribed by Commission rules. Rule 31a-1 under the Act (17 CFR 270.31a-1) specifies the books and records that each of these entities must maintain. Rule 31a-2 under the Act (17 CFR 270.31a-2), which was adopted on April 17, 1944, specifies the time periods that entities must retain certain books and records, including those required to be maintained under rule 31a-1.

Rule 31a-2 requires the following:

1. Every fund must preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a-1(b)(1)-(4).<sup>1</sup>

2. Every fund must preserve for at least six years, and in an easily accessible place for the first two years:

a. All books and records required under rule 31a-1(b)(5)-(12);<sup>2</sup>

<sup>1</sup> These include, among other records, journals detailing daily purchases and sales of securities, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, separate ledgers reflecting separately for each portfolio security as of the trade date all "long" and "short" positions carried by the fund for its own account, and corporate charters, certificates of incorporation, by-laws and minute books.

<sup>2</sup> These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund, records of all other portfolio purchases or sales, records of all puts, calls, spreads, straddles or other options in which the fund has an interest, has granted, or has guaranteed, records of proof of money balances in all ledger accounts, files of all advisory material received from the investment

b. All vouchers, memoranda, correspondence, checkbooks, bank statements, canceled checks, cash reconciliations, canceled stock certificates, and all schedules evidencing and supporting each computation of net asset value of fund shares, and other documents required to be maintained by rule 31a-1(a) and not enumerated in rule 31a-1(b);

c. Any advertisement, pamphlet, circular, form letter or other sales literature addressed or intended for distribution to prospective investors;

d. Any record of the initial determination that a director is not an interested person of the fund, and each subsequent determination that the director is not an interested person of the fund, including any questionnaire and any other document used to determine that a director is not an interested person of the company;

e. Any materials used by the disinterested directors of a fund to determine that a person who is acting as legal counsel to those directors is an independent legal counsel; and

f. Any documents or other written information considered by the directors of the fund pursuant to section 15(c) of the Act (15 U.S.C. 80a-15(c)) in approving the terms or renewal of a contract or agreement between the fund and an investment advisor.<sup>3</sup>

3. Every underwriter, broker, or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) ("section 17") for the periods established in those rules.

4. Every depositor of a fund, and every principal underwriter of a fund (other than a closed-end fund), must preserve for at least six years records required to be maintained by brokers and dealers under rules adopted under section 17 to the extent the records are necessary or appropriate to record the entity's transactions with the fund.

5. Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be preserved by investment advisers under rules adopted under section 204 of the

adviser, and memoranda identifying persons, committees, or groups authorizing the purchase or sale of securities for the fund.

<sup>3</sup> Section 15 of the Act requires that fund directors, including a majority of independent directors, annually approve the fund's advisory contract and that the directors first obtain from the adviser the information reasonably necessary to evaluate the contract. The information request requirement in section 15 provides fund directors, including independent directors, a tool for obtaining the information they need to represent shareholder interests.

Investment Advisers Act of 1940 (15 U.S.C. 80b-4) ("section 204") for the periods specified in those rules.

6. Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 to the extent the records are necessary or appropriate to reflect the adviser's transactions with the fund.

The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, a fund on (i) micrographic media, including microfilm, microfiche, or any similar medium, or (ii) electronic storage media, including any digital storage medium or system that meets the terms of rule 31a-2(f). The fund, or person that maintains and preserves records on its behalf, must arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.<sup>4</sup>

We periodically inspect the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. Our staff spends a significant portion of its time in these inspections reviewing the information contained in the books and records required to be kept by rule 31a-1 and to be preserved by rule 31a-2.

There are 3,484 funds currently operating as of March 31, 2012, all of which are required to comply with rule 31a-2. Based on conversations with representatives of the fund industry and past estimates, our staff estimates that each fund currently spends 220 total hours per year complying with rule 31a-2. Our staff estimates that the 220 hours spent by a typical fund would be split evenly between administrative and

<sup>4</sup> In addition, the fund, or person who maintains and preserves records for the fund, must provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the fund may request: (A) A legible, true, and complete copy of the record in the medium and format in which it is stored; (B) a legible, true, and complete printout of the record; and (C) means to access, view, and print the records; and must separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by rule 31a-2(f). In the case of records retained on electronic storage media, the fund, or person that maintains and preserves records on its behalf, must establish and maintain procedures: (i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (ii) to limit access to the records to properly authorized personnel, the directors of the fund, and the Commission (including its examiners and other representatives); and (iii) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

computer operation personnel,<sup>5</sup> with 110 hours spent by a general clerk and 110 hours spent by a senior computer operator. Based on these estimates, our staff estimates that the total annual burden for all funds to comply with rule 31a-2 is 766,480 hours.<sup>6</sup>

The hour burden estimates for retaining records under rule 31a-2 are based on our experience with registrants and our experience with similar requirements under the Act and the rules under the Act. The number of burden hours may vary depending on, among other things, the complexity of the fund, the issues faced by the fund, and the number of series and classes of the fund.

Based on conversations with representatives of the fund industry and past estimates, our staff estimates that the average cost of preserving books and records required by rule 31a-2 is approximately \$70,000 annually per fund. As discussed previously, there are 3,484 funds currently operating, for a total cost of preserving records as required by rule 31a-2 of approximately \$243,880,000 per year.<sup>7</sup> Our staff understands, however, based on previous conversations with representatives of the fund industry, that funds would already spend approximately half of this amount (\$121,940,000) to preserve these same books and records, as they are also necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns. Therefore, we estimate that the total annual cost burden for all funds as a result of compliance with rule 31a-2 is approximately \$121,940,000 per year.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 31a-2 is mandatory for all funds. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: August 22, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-21114 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

#### *Extension:*

Form N-3, SEC File No. 270-281, OMB Control No. 3235-0316.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is "Form N-3 (17 CFR 239.17a and 274.11b) under the Securities Act of 1933 (15 U.S.C. 77) and under the Investment Company Act of 1940 (15 U.S.C. 80a), Registration Statement of Separate Accounts Organized as Management Investment Companies." Form N-3 is the form used by separate accounts offering variable annuity contracts which are organized as management investment companies to register under the Investment

Company Act of 1940 ("Investment Company Act") and/or to register their securities under the Securities Act of 1933 ("Securities Act"). Form N-3 is also the form used to file a registration statement under the Securities Act (and any amendments thereto) for variable annuity contracts funded by separate accounts which would be required to be registered under the Investment Company Act as management investment companies except for the exclusion provided by Section 3(c)(11) of the Investment Company Act (15 U.S.C. 80a-3(c)(11)). Section 5 of the Securities Act (15 U.S.C. 77e) requires the filing of a registration statement prior to the offer of securities to the public and that the statement be effective before any securities are sold, and Section 8 of the Investment Company Act (15 U.S.C. 80a-8) requires a separate account to register as an investment company.

Form N-3 also permits separate accounts offering variable annuity contracts which are organized as investment companies to provide investors with a prospectus and a statement of additional information covering essential information about the separate account when it makes an initial or additional offering of its securities. Section 5(b) of the Securities Act requires that investors be provided with a prospectus containing the information required in a registration statement prior to the sale or at the time of confirmation or delivery of the securities. The form also may be used by the Commission in its regulatory review, inspection, and policy-making roles.

Commission staff estimates that there are zero initial registration statements and 7 post-effective amendments to initial registration statements filed on Form N-3 annually and that the average number of portfolios referenced in each post-effective amendment is 2. The Commission further estimates that the hour burden for preparing and filing a post-effective amendment on Form N-3 is 155.2 hours per portfolio. The total annual hour burden for preparing and filing post-effective amendments is 2172.8 hours (7 post-effective amendments × 2 portfolios × 155.2 hours per portfolio). The estimated annual hour burden for preparing and filing initial registration statements is 0 hours. The total annual hour burden for Form N-3, therefore, is estimated to be 2172.8 hours (2172.8 hours + 0 hours).

The information collection requirements imposed by Form N-3 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not

<sup>5</sup> However, the hour burden may be incurred by a variety of fund staff, and the type of staff position used for compliance with the rule may vary widely from fund to fund.

<sup>6</sup> This estimate is based on the following calculations: 3,484 funds × 220 hours = 766,480 total hours.

<sup>7</sup> This estimate is based on the following calculation: 3,484 funds × \$70,000 = \$243,880,000.

required to respond to a collection of information unless it displays a currently valid control number.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: August 22, 2012.

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2012-21116 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 30, 2012 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday,

August 30, 2012 will be: institution and settlement of injunctive actions; institution and settlement of administrative proceedings; a litigation matter; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: August 23, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-21259 Filed 8-24-12; 11:15 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67704; File No. SR-C2-2012-028]

### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

August 22, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 2012, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.c2exchange.com/Legal/>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to make clarifying, non-substantive changes to its Fees Schedule in order to make it easier to comprehend for market participants. On August 3, 2012, the Exchange proposed to begin referring to "straight, one-sided orders" as "simple orders".<sup>3</sup> Investors generally refer to orders as either "simple" or "complex" and the terminology "straight, one-sided orders" is not as commonly-known. Since simple orders are straight, one-sided orders, the Exchange proposed to call "straight, one-sided orders" "simple orders" in order to make the Fees Schedule easier for investors to understand. The Exchange further proposed to clarify that such orders are not complex orders (to which a separate set of fees apply) by referring to simple orders as "simple, non-complex" orders. However, in that proposal, the Exchange only changed some, but not all, references to "straight, one-sided orders" to "simple, non-complex orders". The Exchange hereby proposes to change the remaining references on the Fees Schedule to "straight, one-sided orders" to "simple, non-complex orders" in order to alleviate any potential confusion.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section

<sup>3</sup> See Securities Exchange Act Release No. 34-67675 (August 16, 2012) (SR-C2-2012-027).

<sup>4</sup> 15 U.S.C. 78f(b).

6(b)(5)<sup>5</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed clarifying changes to the Fees Schedule serve to eliminate potential confusion, thereby perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 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*

The Exchange neither solicited nor received comments on the proposed rule change.

### **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)<sup>6</sup> of the Act and paragraph (f) of Rule 19b-4<sup>7</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

Number SR-C2-2012-028 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-C2-2012-028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2012-028 and should be submitted by September 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-21104 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67705; File No. SR-DTC-2012-07]

### **Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Existing Procedures as They Relate to Processing Mandatory Corporate Actions**

August 22, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 14, 2012, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4)(i)<sup>4</sup> thereunder so that the proposal was effective upon filing with the Commission. 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**

As discussed below, this rule change will mitigate risk associated with corporate action processing by eliminating erroneous short positions caused by failure of Participants to move their shares from their segregation account to their general free account. The change will also bring operational efficiencies to DTC by reducing the number of manual adjustments related to correcting Participant short positions and reversing the 130% short position charge.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections A, B,

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(i).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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*

DTC processes mandatory corporate actions through its Reorg. Dividends, Proxy ("RDP") system. Currently, when processing a mandatory corporate action in which securities are exchanged, the RDP system will automatically debit the position from the Participant's general free account. However, in certain instances, a Participant may have, prior to the split, moved the position from its general free account to its segregation account.<sup>5</sup> This causes a short position in the Participant's general free account and the automatic assessment of a short position fee of 130% of market value for the Participant. Additionally, when the Participant is given a position in the new CUSIP, the position is posted to the Participant's free account instead of the Participant's segregation account.

In an effort to mitigate risk associated with mandatory corporate action processing, DTC is updating its systems so that it will debit a Participant's position in either its segregation account or free account, as appropriate, and allocate the appropriate proportion of the position in the new CUSIP to the Participant's segregation account and free account, as appropriate. This change will mitigate risk associated with corporate action processing by eliminating erroneous short positions caused by failure of Participants to move their shares from their segregation account to their general free account. The change will also bring operational efficiencies to DTC by reducing the number of manual adjustments related to correcting Participant short positions and reversing the 130% short position charge.

DTC expects to implement these changes in the first quarter of 2013. DTC will announce the implementation date by Important Notice.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC in that it will facilitate the prompt and accurate clearance and settlement of securities transactions by streamlining processes associated with corporate action events

and mitigating risk associated with such processing.<sup>6</sup>

*B. Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(4)(i)<sup>8</sup> thereunder because it effects a change in an existing service of DTC that does not significantly affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and does not significantly affect the respective rights or obligations of DTC or persons using this service. 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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2012-07 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-DTC-2012-07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at DTC's principal office and on DTC's Web site at [http://www.dtcc.com/legal/rule\\_filings/dtc/2012.php](http://www.dtcc.com/legal/rule_filings/dtc/2012.php). 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-DTC-2012-07 and should be submitted on or before September 18, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-21105 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>5</sup> The Sub-Accounting Service allows Participants to protect securities on deposit at DTC by moving them from their general free account to their segregated account. The securities remain segregated and unavailable for any transactions until the Participant authorizes DTC to release them and return them to their general free account.

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(4)(i).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67706; File No. SR-OCC-2012-10]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Amend OCC's By-Laws and Rules To Terminate OCC's Pledge Program

August 22, 2012.

#### I. Introduction

On June 28, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2012-10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the **Federal Register** on July 16, 2012.<sup>3</sup> The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change would terminate OCC's pledge program (the "Program"). Since implementation of the Program, only a limited number of clearing members participated and those that did participate did so on a sporadic basis. OCC is eliminating the Program in its entirety.

The Program was adopted by OCC in the early 1980s to facilitate the ability of an OCC clearing member to finance positions by permitting the clearing member to pledge unsegregated long positions in cleared securities (other than securities futures) for a loan of cash. The Program was initially designed for, and used by, firms clearing market maker business; however, use of the Program diminished as market making operations were acquired by larger wire houses. While OCC occasionally receives an inquiry regarding the Program, it has been essentially dormant for some time. OCC recently reviewed the Program and determined that any potential benefits that OCC may gain through updating the Program are greatly offset by the resources required for such modernization. Accordingly, OCC is terminating the Program in its entirety.

OCC is eliminating Rule 614 in its entirety as well as references to the

Program and Rule 614 in its Rules and in its By-Laws.

#### III. Discussion

Section 19(b)(2)(C) of the Act<sup>4</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act<sup>5</sup> requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The changes to OCC's Rules and By-Laws are designed to allow OCC to remove a rarely used operational function and focus its resources on core clearing operations. Moreover, the elimination of the Program will not materially affect clearing members given its limited and infrequent use. The rule change is not inconsistent with any rules of OCC, including any proposed to be amended. As a result, the rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>7</sup>, that the proposed rule change (File No. SR-OCC-2012-10) be, and hereby is, approved.<sup>8</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill**,  
Deputy Secretary.

[FR Doc. 2012-21106 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>4</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67707; File No. SR-DTC-2012-06]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Updates to Its Custody Service

August 22, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on August 13, 2012, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(4)(i)<sup>4</sup> thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to update the DTC Custody Guide with respect to which assets are eligible to be held for Custody Safekeeping and to make other administrative changes and clarifications.

#### II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

The Custody Service enables Participants that hold securities which are not presently eligible for book-entry

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(i).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 34-67392 (July 10, 2012), 77 FR 41835 (July 16, 2012).

services at DTC to deposit those securities with DTC for safe-keeping and certain limited depository services. Certificates deposited through the Custody Service are held by DTC in customer or Participant name and are not transferred into DTC's nominee name. With this rule filing, DTC is making the following updates to the Custody Guide:

- Clarifying which assets are eligible to be held for Custody Safekeeping by noting DTC's Custody Service will hold certain "Non-Standard" type assets, fully disclosed, for safekeeping only. These assets include, but are not limited to, Option Agreements and Warrant to Purchase. DTC does not accept any liability should such assets be lost, stolen or destroyed. Depositing participants assume full liability as well as responsibility for replacement of lost, stolen or destroyed fully disclosed "Non-Standard" assets;

- Modifying the timeframe within which DTC must receive settlement delivery instructions from Participants in order to meet industry cutoff times;

- Removing duplicative language and language regarding the funds only settlement system and the dividend settlement system since such systems were incorporated into the Envelope Settlement Service;<sup>5</sup> and

- Making clarifications regarding the description of custody services, the vault, inputs and methods of notification.

DTC believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act"), and the rules and regulations thereunder, applicable to DTC in that it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions by enhancing the utilization of DTC's existing services. Moreover, the proposed rule change reduces the costs, inefficiencies and risks associated with the physical safe-keeping of securities by clarifying the procedures associated with the Custody Service.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

<sup>5</sup> For more information regarding this changes, see Securities Exchange Act Release No. 34-65032 (August 4, 2011), 76 FR 49511 (August 10, 2011) [File No. SR-NSCC-2011-04].

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

#### **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)<sup>6</sup> of the Act and Rule 19b-4(f)(4)(i)<sup>7</sup> thereunder and thus became effective upon filing because it is effecting a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. 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*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-DTC-2012-06 on the subject line.

##### *Paper Comments*

- Send 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-DTC-2012-06. 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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(4)(i).

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 filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site at [http://dtcc.com/downloads/legal/rule\\_filings/2012/dtc/SR-DTC-2012-06.pdf](http://dtcc.com/downloads/legal/rule_filings/2012/dtc/SR-DTC-2012-06.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-DTC-2012-06 and should be submitted on or before September 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2012-21107 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-67715; File No. SR-NYSEArca-2012-88]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the RiverFront Strategic Income Fund Under NYSE Arca Equities Rule 8.600**

August 22, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 10, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): RiverFront Strategic Income Fund. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to list and trade shares ("Shares") of the RiverFront Strategic Income Fund (the "Fund") under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares<sup>4</sup> on the Exchange.<sup>5</sup> The Fund is a series

<sup>4</sup> 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.

<sup>5</sup> The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 57801 (May

of the ALPS ETF Trust ("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.<sup>6</sup> The Fund will be managed by WisdomTree Asset Management, Inc. ("WisdomTree" or the "Adviser"). RiverFront Investment Group, LLC ("RiverFront") is the investment sub-adviser for the Fund (the "Sub-Adviser").

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.<sup>7</sup> In addition,

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); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR-NYSEArca-2011-95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR-NYSEArca-2012-09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

<sup>6</sup> The Trust is registered under the 1940 Act. On February 23, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the 1940 Act relating to the Fund (File Nos. 333-148826 and 811-22175) (the "Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Adviser under the 1940 Act. *See* Investment Company Act Release No. 28471 (October 27, 2008) (File No. 812-13458) ("Exemptive Order"). The Fund will be offered in reliance upon the Exemptive Order issued to the Adviser.

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the investment adviser is 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. The Exchange represents that the Investment Adviser and Sub-Adviser, and their respective related personnel, are subject to Investment Advisers Act Rule 204A-1. 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

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 nonpublic information regarding the open-end fund's portfolio. WisdomTree is not affiliated with any broker-dealer. RiverFront is affiliated with a broker-dealer, Robert W. Baird & Co. Incorporated, and has implemented and will maintain a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio. In the event (a) the Adviser or Sub-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 the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### **RiverFront Strategic Income Fund**

According to the Registration Statement, the investment objective of the Fund is to seek total return with an emphasis on income as the source of that total return.

The Fund seeks to achieve its investment objective by investing in a global portfolio of fixed income securities of various maturities, ratings and currency denominations. The Fund intends to utilize various investment strategies in a broad array of fixed income sectors. The Fund will allocate its investments based upon the analysis of the Sub-Adviser of the pertinent economic and market conditions, as well as yield, maturity and currency considerations.

The Fund may purchase fixed income securities issued by U.S. or foreign corporations<sup>8</sup> or financial institutions, including debt securities of all types and maturities, convertible securities and preferred stocks. The Fund also may purchase securities issued or guaranteed by the U.S. Government or foreign governments (including foreign states, provinces and municipalities) or

implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>8</sup> The Fund will invest only in securities that the Adviser or Sub-Adviser deems to be sufficiently liquid. While foreign corporate debt generally must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment, at least 80% of issues of foreign corporate debt held by the Fund will have \$200 million or more par amount outstanding.

their agencies and instrumentalities or issued or guaranteed by international organizations designated or supported by multiple government entities to promote economic reconstruction or development. The average maturity or duration of the Fund's portfolio of fixed income securities will vary based on the Sub-Adviser's assessment of economic and market conditions.

The Fund may invest in mortgage-backed securities ("MBS") issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration ("Ginnie Mae"), the Federal Housing Administration ("FHA"), the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac").<sup>9</sup> The MBS in which the Fund may invest will be either pass-through securities or collateralized mortgage obligations ("CMOs").<sup>10</sup> The Fund may purchase or sell securities on a when issued, delayed delivery or forward commitment basis. The Fund may also invest in other fixed income investment companies, including exchange-traded funds ("ETFs")<sup>11</sup> and/or closed-end funds.

The Fund may invest without limitation in debt securities denominated in foreign currencies and in U.S. dollar-denominated debt securities of foreign issuers, including securities of issuers located in emerging markets. The Sub-Adviser may attempt to reduce currency risk by entering into contracts with banks, brokers or dealers to purchase or sell securities or foreign currencies at a future date ("forward contracts"). The Fund may enter into foreign currency forward and foreign currency futures contracts to facilitate local securities settlements or to protect against currency exposure in connection with its distributions to shareholders.

<sup>9</sup> A third-party pricing service will be used to value some or all of the Fund's MBS.

<sup>10</sup> Pass-through securities represent a right to receive principal and interest payments collected on a pool of mortgages, which are passed through to security holders. CMOs are created by dividing the principal and interest payments collected on a pool of mortgages into several revenue streams (tranches) with different priority rights to portions of the underlying mortgage payments. The Fund will not invest in CMO tranches which represent a right to receive interest only ("IOs"), principal only ("POs") or an amount that remains after other floating-rate tranches are paid (an inverse floater). If the Fund invests in CMO tranches (including CMO tranches issued by government agencies) and interest rates move in a manner not anticipated by Fund management, it is possible that the Fund could lose all or substantially all of its investment.

<sup>11</sup> The Fund will not invest in leveraged or leveraged inverse ETFs.

The Fund has not established any credit rating criteria for the fixed income securities in which it may invest, and it may invest entirely in high yield securities ("junk bonds"). Junk bonds are debt securities that are rated below investment grade by nationally recognized statistical rating organizations ("NRSROs"), or are unrated securities that the Sub-Adviser believes are of comparable quality. The Sub-Adviser considers the credit ratings assigned by NRSROs as one of several factors in its independent credit analysis of issuers.

According to the Registration Statement, the Fund may also invest in money market instruments, including repurchase agreements or other funds which invest exclusively in money market instruments, structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular bond or bond index), and, in accordance with the Exemptive Order, in swaps, options and futures contracts. The Fund may also invest in municipal securities. The Fund may invest up to 5% of its assets in MBS (which may include commercial mortgage-backed securities ("CMBS")) or other asset-backed securities issued or guaranteed by private issuers. The Fund may also invest in money market instruments or other short-term fixed income instruments as part of a temporary defensive strategy to protect against temporary market declines.

The Fund may invest in commercial paper and other short-term corporate instruments.<sup>12</sup>

The Fund may purchase participations in corporate loans. Participation interests generally will be acquired from a commercial bank or other financial institution (a "Lender") or from other holders of a participation interest (a "Participant"). The purchase of a participation interest either from a Lender or a Participant will not result in any direct contractual relationship with the borrowing company (the "Borrower"). The Fund generally will have no right directly to enforce compliance by the Borrower with the terms of the credit agreement. Instead, the Fund will be required to rely on the Lender or the Participant that sold the participation interest, both for the

<sup>12</sup> Commercial paper consists of short-term promissory notes issued primarily by corporations. Commercial paper may be traded in the secondary market after its issuance. As of July 31, 2012, the amount of commercial paper outstanding (seasonally adjusted) was approximately \$1000.5 billion. See <http://www.federalreserve.gov/releases/CP/default.htm>.

enforcement of the Fund's rights against the Borrower and for the receipt and processing of payments due to the Fund under the loans. Under the terms of a participation interest, the Fund may be regarded as a member of the Participant, and thus the Fund is subject to the credit risk of both the Borrower and a Participant. Participation interests are generally subject to restrictions on resale. Generally, the Fund considers participation interests to be illiquid and therefore subject to the Fund's percentage limitations for investments in illiquid securities.

The Fund may invest in securities that have variable or floating interest rates which are readjusted on set dates (such as the last day of the month or calendar quarter) in the case of variable rates or whenever a specified interest rate change occurs in the case of a floating rate instrument. Variable or floating interest rates generally reduce changes in the market price of securities from their original purchase price because, upon readjustment, such rates approximate market rates. Accordingly, as interest rates decrease or increase, the potential for capital appreciation or depreciation is less for variable or floating rate securities than for fixed rate obligations. Many securities with variable or floating interest rates purchased by the Fund are subject to payment of principal and accrued interest (usually within seven days) on the Fund's demand. The terms of such demand instruments require payment of principal and accrued interest by the issuer, a guarantor and/or a liquidity provider. The Sub-Adviser will monitor the pricing, quality and liquidity of the variable or floating rate securities held by the Fund.

The Fund may enter into repurchase agreements, which are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities.

The Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

The Fund may purchase when-issued securities. Purchasing securities on a “when-issued” basis means that the date for delivery of and payment for the securities is not fixed at the date of purchase, but is set after the securities are issued. The payment obligation and, if applicable, the interest rate that will be received on the securities are fixed at the time the buyer enters into the commitment. The Fund will only make commitments to purchase such securities with the intention of actually acquiring such securities, but the Fund may sell these securities before the settlement date if it is deemed advisable.

The Fund may not hold more than 15% of its net assets in: (1) Illiquid securities (which include participation interests); and (2) Rule 144A securities.<sup>13</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund’s net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>14</sup>

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, the Fund will be in compliance with Rule 10A-3<sup>15</sup>

<sup>13</sup> Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A. According to the Registration Statement, Rule 144A permits certain qualified institutional buyers, such as the Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act.

<sup>14</sup> 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 14618 (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).

<sup>15</sup> 17 CFR 240.10A-3.

under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares 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 net asset value (“NAV”) and the Disclosed Portfolio will be made available to all market participants at the same time.

The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage.

The Fund will not invest in non-US equity securities.

#### Creation and Redemption of Shares

Shares may be created and redeemed in “Creation Unit” size aggregations of 50,000 or multiples thereof. In order to purchase Creation Units of the Fund, an investor must generally deposit a designated portfolio of securities (the “Deposit Securities”) (and/or an amount in cash in lieu of some or all of the Deposit Securities) and generally make a cash payment referred to as the “Cash Component.” The list of the names and the amounts of the Deposit Securities is made available by the Fund’s custodian through the facilities of the NSCC immediately prior to the opening of business each day of the NYSE Arca. The Cash Component represents the difference between the NAV of a Creation Unit and the market value of the Deposit Securities. Creations and redemptions of Shares may only be made through an Authorized Participant, as described in the Registration Statement.

Shares may be redeemed only in Creation Units at their NAV and only on a day the NYSE Arca is open for business. The Fund’s custodian will make available immediately prior to the opening of business each day of the NYSE Arca, through the facilities of the NSCC, the list of the names and the amounts of the Fund’s portfolio securities that will be applicable that day to redemption requests in proper form (“Fund Securities”). Fund Securities received on redemption may not be identical to Deposit Securities, which are applicable to purchases of Creation Units. Unless cash redemptions or partial cash redemptions are available or specified for the Fund, the redemption proceeds will consist of the Fund Securities, plus cash in an amount equal to the difference between the NAV of Shares being redeemed as next determined after receipt by the transfer agent of a redemption request in proper form, and the value of the Fund Securities (the “Cash Redemption Amount”), less the applicable

redemption fee and, if applicable, any transfer taxes.<sup>16</sup>

#### Net Asset Value

According to the Registration Statement, the NAV per Share of the 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, rounded to the nearest cent. Expenses and fees, including without limitation, the management and administration fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV per Share will be calculated by the Fund’s custodian and determined as of the close of the regular trading session on the New York Stock Exchange (“NYSE”) (ordinarily 4:00 p.m., Eastern Time) on each day that such exchange is open.

In computing the Fund’s NAV, the Fund’s debt securities will be valued at market value. Market value generally means a valuation (i) obtained from an exchange, a pricing service or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service or a major market maker (or dealer) or (iii) based on amortized cost. The Fund’s debt securities are thus valued by reference to a combination of transactions and quotations for the same or other securities believed to be comparable in quality, coupon, maturity, type of issue, call provisions, trading characteristics and other features deemed to be relevant. To the extent the Fund’s debt

<sup>16</sup> The Fund may, in certain circumstances, allow cash creations or partial cash creations but not redemptions (or vice versa) if the Sub-Adviser believes it will allow the Fund to adjust its portfolio in a manner which is more efficient for shareholders. The Fund may allow creations or redemptions to be conducted partially in cash only where certain instruments are (i) in the case of the purchase of a Creation Unit, not available in sufficient quantity for delivery; (ii) not eligible for transfer through either the NSCC or DTC; or (iii) not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances. To the extent the Fund allows creations or redemptions to be conducted wholly or partially in cash, such transactions will be effected in the same manner for all Authorized Participants on a given day except where: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available to a particular Authorized Participant in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of the Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind. According to the Registration Statement, an additional variable charge for cash or partial cash creations, and cash or partial cash redemptions, may also be imposed to compensate the Fund for the costs associated with buying the applicable securities.

securities, including some or all of the MBS in which the Fund invests, will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service, any such third-party pricing service may use a variety of methodologies to value some or all of the Fund's debt securities to determine the market price. For example, the prices of securities with characteristics similar to those held by the Fund may be used to assist with the pricing process. In addition, the pricing service may use proprietary pricing models. Short-term debt securities having a maturity of 60 days or less will be generally valued at amortized cost. The Fund's securities holdings that are traded on a national securities exchange will be valued based on their last sale price. Price information on listed securities will be taken from the exchange where the security is primarily traded. Other portfolio securities and assets for which market quotations are not readily available will be valued based on fair value as determined in good faith in accordance with procedures adopted by the Fund's Board of Directors.

According to the Registration Statement, there can be no assurance as to whether and/or the extent to which the Shares will trade at premiums or discounts to NAV. The deviation risk may be heightened to the extent the Fund invests in MBS, as such investments may be difficult to value. Because MBS may trade infrequently, the most recent trade price may not indicate their true value. As noted above, a third-party pricing service may be used to value some or all of the Fund's MBS. To the extent that market participants question the accuracy of the pricing service's prices, there is a risk of significant deviation between the NAV and market price of some or all of the MBS in which the Fund invests.

#### Portfolio Indicative Value

The Portfolio Indicative Value ("PIV") as defined in NYSE Arca Equities Rule 8.600(c)(3) of Shares of the Fund will be widely disseminated by one or more major market data vendors at least every fifteen seconds during the Exchange's Core Trading Session. To the extent the Fund holds securities that are traded in foreign markets, the PIV calculations will be based on such foreign market prices and may not reflect events that occur subsequent to the foreign market's close. As a result, premiums and discounts between the approximate value and the market price could be affected. This approximate value should not be viewed as a "real-time" update

of the NAV per Share of the Fund because the approximate value may not be calculated in the same manner as the NAV, which is computed once a day, generally at the end of the business day.

#### Availability of Information

The Fund's Web site ([www.alpsetfs.com](http://www.alpsetfs.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>17</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask 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 Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>18</sup>

The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

On a daily basis, the Adviser will disclose for each portfolio security and financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of shares, if applicable, and dollar value of financial instruments 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, intra-day and end-of-day prices for all debt securities or other financial instruments held by the Fund

<sup>17</sup> The Bid/Ask Price of the Fund is determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>18</sup> Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund 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.

will be available through major market data vendors and broker-dealers.

In addition, a basket composition file disclosing the Fund Securities, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund. Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the 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](http://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 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, as noted above, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>19</sup> The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

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.

#### 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 Fund.<sup>20</sup> Trading in Shares of the

<sup>19</sup> Currently, it is the Exchange's understanding that several major market data vendors widely disseminate PIVs taken from CTA or other data feeds.

<sup>20</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

Fund 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 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 Fund; 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 Fund 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 Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG or with which the

Exchange has entered into a surveillance sharing agreement.<sup>21</sup>

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 Units (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 PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV 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 Fund is 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)<sup>22</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Sub-Adviser is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such

<sup>21</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

broker-dealer regarding access to information concerning the composition and/or changes to a portfolio. The Fund will not invest in non-US equity securities. The Fund will not invest in leveraged or leveraged inverse ETFs. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. Quotation and last sale information for the Shares will be available via the CTA high-speed line. In addition, the PIV, 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. The Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day. 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 Fund may be halted. The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a surveillance sharing agreement. In addition, the Exchange has procedures that 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 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.

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 Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. 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 Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's 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 Fund will include a form of the prospectus for the Fund 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 Fund 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 Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, 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 an additional type of actively-managed exchange-traded product 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 Fund's holdings, the PIV, 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 Exchange 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 Exchange 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2012-88 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-2012-88. 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 10:00 a.m. and 3:00 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](http://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-2012-88 and should be submitted on or before September 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2012-21173 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>23</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67713; File No. SR-NYSEMKT-2012-39]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 928NY To Expand the Existing Market Maker Risk Limitation Mechanism Making It Available for Orders From Market Makers as Well as Non-Market Maker ATP Holders, and To Provide for Two Additional Risk Limitation Mechanisms

August 22, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 10, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 928NY to expand the existing Market Maker Risk Limitation Mechanism to make it available for orders from Market Makers as well as non-Market Maker ATP Holders, and to provide for two additional risk limitation mechanisms. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange adopted the existing Market Maker Risk Limitation Mechanism to provide a transaction-based mechanism for limiting a Market Maker’s risk during periods of increased and significant trading activity on the Exchange in the Market Maker’s appointment.<sup>4</sup> The Exchange now proposes to expand the existing Market Maker Risk Limitation Mechanism to make it available for orders from Market Makers as well as orders from non-Market Maker ATP Holders (“non-Market Makers”),<sup>5</sup> and to provide for two additional risk limitation mechanisms (collectively, the “Risk Limitation Mechanisms”). The Exchange is proposing these changes to permit Market Makers and non-Market Makers to better manage the risk of multiple, nearly simultaneous executions against their proprietary interest that, in today’s highly automated and electronic trading environment, can occur across multiple series of different option classes. Consistent with the ability to better manage risk, the Exchange anticipates that these changes could enhance the Exchange’s overall market quality as a result of narrowed quote widths and increased liquidity for series traded on the Exchange.

As noted above, the Exchange is proposing to make the three Risk Limitation Mechanisms available to non-Market Makers. The Exchange is proposing this change to respond to requests from non-Market Makers that engage in rapid, proprietary trading. In this regard, non-Market Makers can have risk exposure similar to that of Market Makers, and have similarly sought ways to mitigate this risk. The Exchange believes that making the Risk Limitation Mechanisms available to non-Market Makers will assist them in these efforts.

As is the case today with the Market Maker Risk Limitation Mechanism, the trade counters, and therefore the Risk Limitation Mechanisms themselves, would be based on trading permit

identification (“TPID”).<sup>6</sup> As is also the case today with respect to the existing Market Maker Risk Limitation Mechanism, Market Makers would be required to activate one of the three Risk Limitation Mechanisms at all times for their quotes for each class in their appointment. However, the Risk Limitation Mechanisms would be entirely voluntary with respect to orders, both for those of Market Makers and non-Market Makers. Market Makers and non-Market Makers would only be permitted to activate one of the three Risk Limitation Mechanisms for a particular class at any given time for their orders. However, a Market Maker could activate one Risk Limitation Mechanism for its quotes and a different Risk Limitation Mechanism for its orders, even if both are activated for the same class.<sup>7</sup> The three mechanisms are described in greater detail below.

##### (1) Transaction-Based Risk Limitation Mechanism

The existing Market Maker Risk Limitation Mechanism is transaction-based and automatically cancels all quotes posted by a Market Maker in an appointed class if the trade counter determines that “n” executions within one second have occurred against the quotes of the Market Maker in the particular appointed class.

The Exchange proposes to amend Rule 928NY(b) to apply the existing Market Maker Risk Limitation Mechanism not only to Market Maker quotes, but also to non-Market Maker and Market Maker orders. As proposed, and similar to the existing process for Market Maker quotes,<sup>8</sup> the Transaction-

<sup>6</sup> TPIDs are assigned to Market Makers and non-Market Makers to identify them in the Exchange’s systems.

<sup>7</sup> Market Makers on the Exchange are not able to submit orders on an agency basis. Therefore, a Market Maker within a firm that conducts both an agency and a market making business would have a unique TPID that could only be used for that Market Maker’s quotes and orders. The proposed rule change would not prevent the use of the Risk Limitation Mechanisms for a non-Market Maker’s agency order flow.

<sup>8</sup> The existing Market Maker quote aspect of the mechanism would be renumbered as Rule 928NY(b)(3) and would be triggered when a trade counter has reached “n” executions within a time period specified by the Exchange against the Market Maker’s quotes in an appointed class. As proposed under new Commentary .03 to Rule 928NY, the Exchange would announce via Regulatory Bulletin the applicable time period(s) for the Risk Limitation Mechanisms proposed under Rule 928NY. The Exchange also proposes to specify under Commentary .03 that the Exchange will not specify a time period of less than 100 milliseconds. Additionally, the Exchange anticipates announcing via Regulatory Bulletin, as described in proposed Commentary .03, that the minimum, maximum and default settings for “n,” as well as the potential range for such settings, that are in effect at the time

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR-NYSEALTR-2008-14).

<sup>5</sup> The Exchange proposes to specify within Rule 928NY(a) that non-Market Maker ATP Holders will be referred to as “non-Market Makers” for purposes of Rule 928NY.

Based Risk Limitation Mechanism would be triggered for a non-Market Maker whenever a trade counter has reached “n” executions within a time period specified by the Exchange via Regulatory Bulletin, as discussed further below, against the non-Market Maker’s orders in a specified class. For Market Maker orders, the Transaction-Based Risk Limitation Mechanism would be triggered when a trade counter has reached “n” executions within a time period specified by the Exchange against the Market Maker’s orders in a specified class. Accordingly, “Market Maker” would be deleted from the title of Rule 928NY, as would any other references that would limit Rule 928NY only to Market Makers. Additionally, references to “Transaction-Based” would be added to Rule 928NY(b) to differentiate the existing mechanism from the newly-proposed Risk Limitation Mechanisms, as discussed in greater detail below. Additionally, much of the existing text of Rule 928NY(b) through (f) would be relocated as new Commentary to Rule 928NY, as discussed in greater detail below.

(2) Volume-Based Risk Limitation Mechanism

The Exchange proposes to provide for a new Volume-Based Risk Limitation Mechanism under Rule 928NY(c). The

proposed Volume-Based Risk Limitation Mechanism would be triggered whenever one of the following conditions is met: (1) For a non-Market Maker, when a trade counter has reached “k” contracts traded within a time period specified by the Exchange against the non-Market Maker’s orders in a specified class; (2) for a Market Maker, when a trade counter has reached “k” contracts traded within a time period specified by the Exchange against the Market Maker’s orders in a specified class; or (3) for a Market Maker, when a trade counter has reached “k” contracts traded within a time period specified by the Exchange against the Market Maker’s quotes in an appointed class.<sup>9</sup>

(3) Percentage-Based Risk Limitation Mechanism

The Exchange proposes to provide for a new Percentage-Based Risk Limitation Mechanism under Rule 928NY(d).<sup>10</sup> The proposed Percentage-Based Risk Limitation Mechanism would be triggered whenever one of the following conditions is met: (1) For a non-Market Maker, when a trade counter has calculated that the non-Market Maker has traded “p” percentage within a time period specified by the Exchange against the non-Market Maker’s orders in a specified class; (2) for a Market

Maker, when a trade counter has calculated that the Market Maker has traded “p” percentage within a time period specified by the Exchange against the Market Maker’s orders in a specified class; or (3) for a Market Maker, when a trade counter has calculated that the Market Maker has traded “p” percentage within a time period specified by the Exchange against the Market Maker’s quotes in an appointed class.<sup>11</sup> The “p” percentage specified by the non-Market Maker or Market Maker would be calculated as follows (and as shown in the examples below):<sup>12</sup> (1) A trade counter would first calculate, for each series of an option class, the percentage of a non-Market Maker’s or Market Maker’s order size or a Market Maker’s quote size that is executed on each side of the market, including both displayed and non-displayed size, and (2) a trade counter would then sum the overall series percentages for the entire option class to calculate the “p” percentage.

Example 1

For Examples 1 and 2, if a Market Maker is quoting at the National Best Bid or Offer (“NBBO”) in four series of an appointed class, and specifies its “p” percentage at 100%, a trade counter would calculate such percentage as follows:

Series	Quote size	Number of contracts executed	Series percentage
Series 1 .....	100	40	40
Series 2 .....	50	20	40
Series 3 .....	200	20	10
Series 4 .....	150	15	10
Total .....	500	95	100

In Example 1, the aggregate number of contracts executed among all series during the time period specified by the Exchange that equals the specified percentage of 100%

is 95 contracts, at which point the Percentage-Based Risk Limitation Mechanism would be triggered and the Market Maker’s

remaining quotes in the appointed class would be cancelled.

Example 2

Series	Quote size	Number of contracts executed	Series percentage
Series 1 .....	100	0	0
Series 2 .....	50	0	0
Series 3 .....	200	0	0

the Exchange implements this proposed change, will continue to apply to the Transaction-Based Risk Limitation Mechanism in the future. In this regard, the Exchange notes that it recently amended current Rule 928NY(b)(1) to specify that the potential range for the settings applicable to the existing Market Maker Risk Limitation Mechanism will be between one and 100 executions per second, to eliminate the current reference to the default setting, and, in the future, to specify the applicable minimum, maximum and default settings via Regulatory Bulletin. See Securities Exchange Act

Release No. 67314 (June 29, 2012), 77 FR 40139 (July 6, 2012) (SR-NYSEAmex-2012-23).

<sup>9</sup> The Exchange anticipates announcing via Regulatory Bulletin that the applicable minimum and maximum settings for “k” (as well as the potential range for the settings applicable to the Volume-Based Risk Limitation Mechanism) will be 20 and 5,000, respectively.

<sup>10</sup> The proposed Percentage-Based Risk Limitation Mechanism is partially based on NASDAQ OMX PHLX (“PHLX”) Rule 1093. See Securities Exchange Act Release No. 53166 (January

23, 2006), 71 FR 4625 (January 27, 2006) (SR-Phlx-2006-05).

<sup>11</sup> The Exchange anticipates announcing via Regulatory Bulletin that the applicable minimum and maximum settings for “p” (as well as the potential range for the settings applicable to the Percentage-Based Risk Limitation Mechanism) will be 100 and 2,000, respectively.

<sup>12</sup> The examples provided below are for Market Maker quotes, but would similarly apply to non-Market Maker and Market Maker orders.

Series	Quote size	Number of contracts executed	Series percentage
Series 4 .....	150	150	100
Total .....	500	150	100

In Example 2, the aggregate number of contracts executed among all series during the time period specified by the Exchange that equals the specified percentage of 100% is 150 contracts, at which point the

Percentage-Based Risk Limitation Mechanism would be triggered and the Market Maker's remaining quotes in the appointed class would be cancelled.

*Example 3*

For Example 3, if a Market Maker is quoting at the NBBO in four series of a particular option class, and specifies its "p" percentage at 200%, a trade counter would calculate such percentage as follows:

Series	Quote size	Number of contracts executed	Series percentage
Series 1 .....	100	80	80
Series 2 .....	50	40	80
Series 3 .....	200	40	20
Series 4 .....	150	30	20
Total .....	500	190	200

In Example 3, the aggregate number of contracts executed among all series during the time period specified by the Exchange that equals the specified percentage of 200% is 190 contracts, at which point the Percentage-Based Risk Limitation Mechanism would be triggered and the Market Maker's remaining quotes in the appointed class would be cancelled.

**Trade Counter**

The trade counters serve as the basis for determining whether a Risk Limitation Mechanism is triggered. Rule 928NY(a) currently describes the existing trade counter, which is incremented every time a Market Maker executes a trade against its quote in any series in an appointed class. The Exchange proposes to amend Rule 928NY(a) to reflect that the existing trade counter will be replaced by separate trade counters that the System will maintain for each of the following scenarios: (1) When a non-Market Maker order is executed in any series in a specified class;<sup>13</sup> (2) when a Market Maker order is executed in any series in a specified class; and (3) when a Market Maker quote is executed in any series in an appointed class. The Exchange also proposes to reflect that for each of these scenarios the trade counters will be incremented by one every time a trade is executed and will also aggregate the number of contracts traded during each such execution. The trade counters will also calculate applicable percentages for

Market Makers and non-Market Makers using the proposed Percentage-Based Risk Limitation Mechanism. These proposed changes to Rule 928NY(a) are necessary due to the changes proposed below.

**General**

As proposed under new Commentary .01 to Rule 928NY, and similar to the current description in existing Rule 928NY(b), the System would automatically cancel electronic orders or quotes pursuant to proposed paragraph (e) of Rule 928NY<sup>14</sup> by generating a "bulk cancel" message.<sup>15</sup> Similar to the current description in existing Rule 928NY(c), the bulk cancel message would be processed by the System in time priority with any other quote or order message received by the System.<sup>16</sup> Additionally, any orders or

quotes that matched with a Market Maker's quote or a Market Maker's or non-Market Maker's order and were received by the System prior to the receipt of the bulk cancel message would be automatically executed. However, orders or quotes received by the System after receipt of the bulk cancel message would not be executed. In this regard, the proposed rule change would not relieve a non-Market Maker or Market Maker of its "firm quote" obligation under Rule 602 of Regulation NMS<sup>17</sup> or Rule 970NY. Furthermore, the proposed rule change would not relieve Market Makers on the Exchange of their quoting obligations under the Exchange's Rules.<sup>18</sup>

As proposed under new Commentary .02 to Rule 928NY, and similar to the current description in Rule 928NY(d), if one of the Risk Limitation Mechanisms is triggered pursuant to proposed paragraph (b)(1) or (2), (c)(1) or (2), or (d)(1) or (2) of Rule 928NY, any orders sent by the non-Market Maker or Market Maker, respectively, in the specified class would be rejected until the non-Market Maker or Market Maker submits a message to the System to enable the entry of new orders. Similarly, if one of the Risk Limitation Mechanisms is triggered pursuant to proposed paragraph (b)(3), (c)(3), or (d)(3) of Rule 928NY, any quotes sent by the Market Maker in the appointed class would be rejected until the Market Maker submits a message to the System to enable the entry of new quotes.

<sup>13</sup> The Exchange proposes to include the concept of a "specified class" to reflect that Market Makers and non-Market Makers must specify the class(es) for which a Risk Limitation Mechanism is activated for orders or none of the Risk Limitation Mechanisms will be activated.

<sup>14</sup> As proposed under Rule 928NY(e), the System would take the following action if one of the Risk Limitation Mechanisms described herein is triggered: (1) If triggered pursuant to proposed paragraph (b)(1), (c)(1) or (d)(1) of Rule 928NY, the System would automatically cancel all of the non-Market Maker's orders in the specified class; (2) if triggered pursuant to proposed paragraph (b)(2), (c)(2) or (d)(2) of Rule 928NY, the System would automatically cancel all of the Market Maker's orders in the specified class; or (3) if triggered pursuant to proposed paragraph (b)(3), (c)(3) or (d)(3) of Rule 928NY, the System would automatically cancel all of the Market Maker's quotes in the appointed class.

<sup>15</sup> As is the case today for the existing Market Maker Risk Limitation Mechanism, the Risk Limitation Mechanisms provided under Rule 928NY would only be applicable to electronic trading on the Exchange.

<sup>16</sup> As is the case today for the existing Market Maker Risk Limitation Mechanism, Public Customer orders cancelled pursuant to a Risk Limitation Mechanism bulk cancel message would not be counted for purposes of calculating the Exchange's Cancellation Fee.

<sup>17</sup> 17 CFR 242.602.

<sup>18</sup> See, e.g., Rule 925NY.

As proposed under new Commentary .03 to Rule 928NY, the Exchange would specify via Regulatory Bulletin any applicable minimum, maximum and/or default settings for the Risk Limitation Mechanisms proposed under Rule 928NY.<sup>19</sup> This would include those settings that are applicable for the existing Market Maker Risk Limitation Mechanism at the time the Exchange implements this proposed change, which, as discussed above, would be renamed as the Transaction-Based Risk Limitation Mechanism, as well as for the proposed new Volume-Based and Percentage-Based Risk Limitation Mechanisms.<sup>20</sup> Accordingly, the text proposed within Commentary .03 is designed to conform to the text that is currently provided under Rule 928NY(b)(1).<sup>21</sup> The Exchange also proposes to specify under Commentary .03 that the Exchange will not (i) specify a minimum setting of less than one or a maximum setting of more than 100 for the Transaction-Based Risk Limitation Mechanism; (ii) specify a minimum setting of less than 20 or a maximum setting of more than 5,000 for the Volume-Based Risk Limitation Mechanism; or (iii) specify a minimum

<sup>19</sup> The Exchange will issue the Regulatory Bulletin at least one trading day in advance of the settings becoming effective. All such Regulatory Bulletins will contain information regarding changes to the settings in the Risk Limitation Mechanisms, the effective date of such changes and contact information of Exchange staff who can provide additional information. The Exchange distributes Regulatory Bulletins simultaneously to all ATP Holders via email and posts the Regulatory Bulletins to the Exchange's Web site.

Upon receiving notification of a change to the settings for the Risk Limitation Mechanisms by the Exchange, ATP Holders will be able to make adjustments they deem necessary to their own risk settings for the Risk Limitation Mechanisms using the same electronic interface that they use to send quotes and orders to the Exchange. In addition, ATP Holders may elect to adjust risk settings in their own proprietary systems in reaction to any changes initiated by the Exchange. When adjusting risk parameters for the Risk Limitation Mechanisms and/or a proprietary system, in reaction to a change to the risk settings by the Exchange, ATP Holders are able to utilize functionality that is both readily available and user controlled.

Accordingly, the Exchange believes that providing ATP Holders with at least one day's advance notice prior to making adjustments to the settings of the Risk Limitation Mechanisms will afford ATP Holders sufficient time to review their risk settings and make operational and/or technological changes, to either the user controlled risk settings for the Risk Limitation Mechanisms or to their own proprietary systems, necessary to accommodate any such changes made by the Exchange.

<sup>20</sup> See *supra* notes 8, 9, and 11. The default settings would apply only to Market Makers using the Transaction-Based Risk Limitation Mechanism, and further would apply only with respect to a Market Maker's quotes, not its orders.

<sup>21</sup> See Securities Exchange Act Release No. 67314 (June 29, 2012), 77 FR 40139 (July 6, 2012) (SR-NYSEAmex-2012-23).

setting of less than 100 or a maximum setting of more than 2,000 for the Percentage-Based Risk Limitation Mechanism. Similarly, as proposed under new Commentary .03 to Rule 928NY, the Exchange would specify via Regulatory Bulletin the applicable time period(s) for the Risk Limitation Mechanisms proposed under Rule 928NY. The Exchange also proposes to provide under Commentary .03 that the Exchange will not specify a time period of less than 100 milliseconds.

As proposed under new Commentary .04 to Rule 928NY, once a Market Maker activates a Risk Limitation Mechanism provided under Rule 928NY for its quotes in an appointed class, the mechanism, and the settings established by the Market Maker, would remain active unless, and until, the Market Maker deactivates the mechanism or changes the settings.<sup>22</sup> A non-Market Maker or Market Maker must activate a Risk Limitation Mechanism provided under Rule 928NY for its orders in a specified class, and any corresponding settings, on a daily basis, if at all, or the Risk Limitation Mechanism would not be active. As is the case today for the existing Market Maker Risk Limitation Mechanism, the Risk Limitation Mechanisms provided under Rule 928NY would be in effect, if activated by a non-Market Maker or Market Maker, during Core Trading Hours,<sup>23</sup> including during Trading Auctions (*i.e.*, executions during a Trading Auction would be counted by the trade counters).<sup>24</sup>

As proposed under new Commentary .05 to Rule 928NY, and similar to the current description under Rule 928NY(f), in the event that there are no Market Makers quoting in a class, the best bids and offers of those orders residing in the Consolidated Book in the class shall be disseminated as the Exchange's best bid or best offer. If there are no Market Makers quoting in the class and there are no orders in the

<sup>22</sup> As noted above, a Market Maker must have one of the three Risk Limitation Mechanisms active for its quotes at all times for each class in its appointment. Therefore, if a Market Maker deactivates a Risk Limitation Mechanism, it must then activate another Risk Limitation Mechanism for a particular class.

<sup>23</sup> See Rule 900.2NY(15).

<sup>24</sup> See Rule 952NY. For example, and as discussed above with respect to the bulk cancel message, an order or quote that matches with a non-Market Maker's or Market Maker's order or a Market Maker's quote during a Trading Auction, but prior to the receipt of the bulk cancel message by the System, would be executed. However, an order or quote received by the System during a Trading Auction, but after receipt of the bulk cancel message, would not be eligible for execution against the non-Market Maker's or Market Maker's orders or the Market Maker's quotes.

Consolidated Book in the class, the System would disseminate a bid of zero and an offer of zero.

As proposed under new Commentary .06 to Rule 928NY, the trade counters would automatically reset and commence a new count (1) when a time period specified by the Exchange elapses or, (2) if one of the Risk Limitation Mechanisms provided under Rule 928NY is triggered for a particular class, when the non-Market Maker or Market Maker submits a message to the System to enable the entry of new orders or quotes, as provided in proposed Commentary .02 to Rule 928NY.

As proposed under new Commentary .07 to Rule 928NY, only executions against order types specified by the Exchange via Regulatory Bulletin and against quotes of Market Makers would be considered by a trade counter.<sup>25</sup> Executions against Market Maker orders would not be considered by a trade counter in connection with a Market Maker's quoting activity. Likewise, executions against Market Maker quotes would not be considered by a trade counter in connection with a Market Maker's order activity. The Exchange believes that specifying applicable order types via Regulatory Bulletin, including any changes thereto in the future, (i) would be consistent with the manner in which the Exchange currently announces the applicable minimum, maximum and default settings for the Risk Limitation Mechanisms;<sup>26</sup> (ii) would be consistent with the manner in which the Exchange proposes to announce the applicable time period(s) for the Risk Limitation Mechanisms; and (iii) would also be consistent with the manner in which the Commission currently permits other option exchanges to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, *i.e.*, via notices, bulletins or circulars.<sup>27</sup>

<sup>25</sup> Due to technology considerations, the Exchange plans to initially apply the Risk Limitation Mechanisms only to the following order types: "PNP Orders," "PNP—Blind Orders," and "PNP—Light Orders." The Exchange has selected these particular order types because they are the most commonly used order types of non-Market Makers engaged in proprietary trading. In this respect, non-Market Makers use these order types because they are non-routable Limit Orders that are only executed on the Exchange. In the future, the Exchange may determine to expand the Risk Limitation Mechanisms to other order types used by such firms, and it would announce any such changes via Regulatory Bulletin pursuant to proposed Commentary .07 to Rule 928NY.

<sup>26</sup> See *supra* notes 8, 9 and 11.

<sup>27</sup> See, *e.g.*, BOX Options Exchange LLC ("BOX") Rule 8140, which provides that, related to BOX's

As proposed under new Commentary .08 to Rule 928NY, a determination of whether the conditions of proposed paragraph (b), (c) or (d) of Rule 928NY have been met, and any resulting cancellation of orders or quotes pursuant to proposed paragraph (e) of Rule 928NY, shall be made on the basis of TPID.<sup>28</sup> For example, a non-Market Maker that submits orders to the Exchange under separate TPIDs would not have the orders from each TPID aggregated for purposes of the Risk Limitation Mechanisms. Instead, the orders attributable to each TPID would be counted by the trade counters separately, and the triggering of a Risk Limitation Mechanism for one of the non-Market Maker's TPIDs would not result in a trigger of a Risk Limitation Mechanism for the other TPID of the non-Market Maker. Also, as noted above, a non-Market Maker or a Market Maker could activate no more than one of the three Risk Limitation Mechanisms for a particular class for its orders and a Market Maker would be required to have exactly one of the three Risk Limitation Mechanisms activated at all times for its quotes for each class in its appointment. However, a Market Maker could activate one Risk Limitation Mechanism for its quotes and a different Risk Limitation Mechanism for its

Quote Removal Mechanism Upon Technical Disconnect, BOX Market Makers will be notified of the value that "n" seconds represents via Regulatory Circular. See also Securities Exchange Act Release No. 58140 (July 10, 2008), 73 FR 41384 (July 18, 2008) (SR-BSE-2008-40), in which the Commission noted that "n" seconds would be configurable by BOX and any subsequent re-configurations will be announced to Market Makers via Regulatory Circular. See also Interpretation and Policy .05 to Chicago Board Options Exchange ("CBOE") Rule 6.74A, which provides that any determinations made by CBOE regarding CBOE's Automated Improvement Mechanism, such as eligible classes, order size parameters and the minimum price increment for certain responses, shall be communicated in a Regulatory Circular. See also CBOE Rule 6.13(b)(i)(C)(2)(a), which provides that CBOE may establish certain maximum order size eligibility requirements with respect to automatic executions and announce such determinations via Regulatory Circular. See also CBOE Rules 6.45A and 6.45B, which provide that CBOE will issue a Regulatory Circular to specify certain priority-related information, including specifying which priority rules will govern which classes of options any time CBOE changes the priority. See also CBOE Rule 6.25(a)(4)(i), which provides that, for purposes of nullifying a trade due to an erroneous print in an underlying or related instrument, CBOE may announce such underlying or related instrument via Regulatory Circular. See also C2 Options Exchange ("C2") Rule 6.13, which provides that C2 may make certain determinations regarding the price check parameter feature and announce such determinations via Regulatory Circular. See also Securities Exchange Act Release No. 65311 (September 9, 2011), 76 FR 57094 (September 15, 2011) (SR-C2-2011-018).

<sup>28</sup> See *supra* notes 6 and 7.

<sup>29</sup> This example would similarly be applicable to Market Makers.

orders, even if both are activated for the same class.

Finally, as proposed under new Commentary .09 to Rule 928NY the terms "class" and "classes" include all option series, both puts and calls, overlying the same underlying security. The purpose of Commentary .09 is to eliminate any potential confusion as to the scope of the proposed Risk Limitation Mechanisms.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>30</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>31</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change would prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade because it would provide non-Market Makers and Market Makers with greater control and flexibility with respect to managing risk and the manner in which they enter orders and quotes. This would be accomplished by expanding the existing Market Maker Risk Limitation Mechanism to Market Maker orders and the orders of non-Market Makers as well as through the creation of the proposed new Volume-Based and Percentage-Based Risk Limitation Mechanisms. Increased control and flexibility would also be accomplished by lowering the minimum time period applicable to the Risk Limitation Mechanisms, as compared to the existing Market Maker Risk Limitation Mechanism, from one second to no less than 100 milliseconds. In this regard, the Exchange believes that a lower minimum time period would be more consistent with the rapid trading that occurs in today's highly automated and electronic trading environment. The Exchange also believes that the increased control and flexibility that

<sup>30</sup> 15 U.S.C. 78f(b).

<sup>31</sup> 15 U.S.C. 78f(b)(5).

would result from this proposal would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities.

The Exchange further believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because it would promote consistency, fairness, and objectivity by making the Risk Limitation Mechanisms available to all non-Market Makers and Market Makers, which therefore may enhance the Exchange's overall market quality. The Exchange believes that the potential increase in the Exchange's overall market quality that could result from the Risk Limitation Mechanisms could therefore contribute to the protection of investors and the public interest.

The Exchange further believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because it would permit the Exchange to announce the minimum, maximum and default settings for the Risk Limitation Mechanisms, as well as any applicable time period(s) and order types, via Regulatory Bulletin. The Exchange believes that the flexibility of announcing these details via Regulatory Bulletin is necessary because it would permit the Exchange to reasonably ensure that, for example, the applicable settings are at a level that is consistent with existing market conditions, such that the Risk Limitation Mechanisms are able to operate in the manner intended. Use of Regulatory Bulletins would also be consistent with the manner in which the Exchange currently announces the minimum, maximum and default settings for the existing Market Maker Risk Limitation Mechanism as well as the manner in which the Commission currently permits other option exchanges to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, *i.e.*, via notices, bulletins or circulars.<sup>32</sup> Utilizing Regulatory Bulletins in this manner would, for example, permit the Exchange to increase or decrease the time period applicable to the Risk

<sup>32</sup> See *supra* note 27. For example, NASDAQ OMX Options Technical Update #2012-9 was recently distributed to notify participants on NASDAQ Options Market ("NOM"), PHLX and NASDAQ OMX BX Options ("BX") that, effective as of the date of the Technical Update (*i.e.*, July 20, 2012), those markets would decrease the allowable time interval setting for the "Rapid Fire Risk Protection," from increments of one second to increments as small as 100 milliseconds.

Limitation Mechanisms, should the Exchange choose to do so, to accommodate systems capacity concerns, changes in market conditions or the technology needs and considerations of Market Makers and non-Market Makers.

The Exchange also believes that the use of Regulatory Bulletins in this manner would further remove impediments to, and perfect the mechanisms of, a free and open market by reducing the resources that would otherwise be expended, by both the Exchange and the Commission, if the Exchange is required to propose a rule change with the Commission each time it wishes to change these settings. However, while the Exchange would have certain discretion with respect to the levels at which it could adjust these settings, the Exchange would not be permitted to adjust the settings below the minimum levels proposed herein. The Exchange believes that this would reasonably ensure that the settings are at all times within a reasonable range.

The Exchange notes that the proposed rule change would not relieve a non-Market Maker or Market Maker of its "firm quote" obligation under Rule 602 of Regulation NMS<sup>33</sup> or Rule 970NY, thereby contributing to the protection of investors and the public interest. In this regard, and as discussed above, the bulk cancel message generated pursuant to the Risk Limitation Mechanisms would be processed in time priority with any other quote or order message received by the System. Additionally, any orders or quotes that matched with a Market Maker's quote or a Market Maker's or non-Market Maker's order and were received by the System prior to the receipt of the bulk cancel message would be automatically executed. However, orders or quotes received by the System after receipt of the bulk cancel message would not be executed. The Exchange further notes that the proposed rule change would not relieve Market Makers on the Exchange of their quoting obligations under the Exchange's Rules.<sup>34</sup> In this regard, and as is the case today, a Market Maker quote that is cancelled or rejected would no longer count toward satisfying the Market Maker's percentage quoting obligation under Rule 925NY. Additionally, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it would be applicable to, and available for, all market participants on the

Exchange, including non-Market Makers and Market Makers.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>35</sup> and Rule 19b-4(f)(6) thereunder.<sup>36</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>37</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>38</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>35</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>36</sup> 17 CFR 240.19b-4(f)(6).

<sup>37</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>38</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### *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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2012-39 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-NYSEMKT-2012-39. 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 Section, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at [www.nyse.com](http://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-NYSEMKT-2012-39 and should be submitted on or before September 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>39</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-21110 Filed 8-27-12; 8:45 am]

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<sup>39</sup> 17 CFR 200.30-3(a)(12).

<sup>33</sup> 17 CFR 242.602.

<sup>34</sup> See *supra* note 18.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67711; File No. SR-EDGX-2012-24]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend EDGX Rules Regarding Market Access

August 22, 2012.

#### I. Introduction

On June 22, 2012, EDGX Exchange, Inc. (“Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend EDGX rules regarding market access for Sponsored Participants.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on July 9, 2012.<sup>4</sup> The Commission received no comment letters regarding the proposed rule change. On July 31, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

#### II. Description of the Proposal

EDGX Rule 11.3(b) sets forth the requirements for Sponsored Participants to obtain authorized access to the Exchange’s System.<sup>6</sup> A Sponsored Participant may obtain authorized access by entering into and maintaining customer agreements with one or more Sponsoring Members<sup>7</sup> through which the Sponsored Participant may trade on the Exchange’s System.<sup>8</sup> The customer

agreements must incorporate the provisions of Rule 11.3(b)(2).<sup>9</sup> In addition, the Sponsoring Member must provide EDGX with a written statement identifying each Sponsored Participant by name and acknowledging its responsibility for the orders, executions, and actions of the Sponsored Participants.<sup>10</sup>

EDGX proposes to amend Rule 1.5(z), defining Sponsored Participant, and Rule 11.3(b), related to access by Sponsored Participants, to clarify the obligations of Sponsoring Members and Sponsored Participants. EDGX proposes to define Sponsored Participant as “a person which has entered into an arrangement with one or more Sponsoring Members whereby such person obtains authorized access to the System in accordance with Rule 11.3.”<sup>11</sup> In addition, EDGX proposes to delete certain contractual provisions under Rule 11.3(b) that EDGX believes are no longer necessary given the obligations applicable to Sponsoring Members under Rule 15c3-5 under the Act (“Market Access Rule”).<sup>12</sup> The Exchange also proposes to amend Rule 11.3(a) to require that only Members,<sup>13</sup> and not Users<sup>14</sup> (which includes Members as well as their Sponsored Participants), enter into agreements with the Exchange to obtain authorized access to EDGX’s System.<sup>15</sup> Sponsored Participants, in turn, must enter into and maintain sponsored or direct access arrangements with one or more Sponsoring Members establishing the proper relationship(s) and account(s) through which the Sponsored Participants may trade on the Exchange’s System.<sup>16</sup>

EDGX also proposes amendments to maintain transparency into who is accessing the Exchange’s System.<sup>17</sup> Sponsoring Members will need to maintain a list of Sponsored Participants authorized to access the Exchange’s System pursuant to Rule 11.3, update that list as necessary, and provide the list to the Exchange upon

request.<sup>18</sup> In addition, the Exchange proposes to require that Sponsoring Members shall comply with all requirements of Rule 15c3-5 under the Act<sup>19</sup> with regard to market access arrangements with Sponsored Participants.<sup>20</sup>

#### III. Discussion and Commission’s Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>21</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>22</sup> which requires, among other things, that the rules of a national securities exchange be 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 a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the instant proposed rule change is consistent with the Act. The Commission notes that the Exchange believes the proposal should serve to eliminate potential confusion regarding the obligations of Sponsoring Members and Sponsored Participants under Exchange rules. In addition, the Commission notes that the Exchange proposes to require Sponsoring Members to comply with Rule 15c3-5 under the Act<sup>23</sup> with regard to market access arrangements with Sponsored Participants.<sup>24</sup> In this regard, the Commission notes that although the proposal relates to obligations of

<sup>18</sup> See EDGX Rule 11.3(b)(2). EDGX is retaining the requirement in Rule 11.4(a) that all Members maintain a list of Authorized Traders who may obtain access to the System on behalf of the Member or the Member’s Sponsored Participants, and provide that list to the Exchange upon request. See Notice, *supra* note 4, at 40393.

<sup>19</sup> See 17 CFR 240.15c3-5. Rule 15c3-5 is designed to ensure that broker-dealers appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, or the stability of the financial system. See Risk Management Controls for Brokers or Dealers with Market Access, Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (“Market Access Rule Adopting Release”).

<sup>20</sup> See EDGX Rule 11.3(b)(3).

<sup>21</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 17 CFR 240.15c3-5.

<sup>24</sup> See EDGX Rule 11.3(b)(3).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> EDGX Rule 1.5(z) defines “Sponsored Participant” as “a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3.” As discussed below, the Exchange proposes to amend the definition of Sponsored Participant as part of the instant proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 67331 (July 2, 2012), 77 FR 40392 (“Notice”).

<sup>5</sup> In Amendment No. 1, the Exchange made a technical change to Rule 1.5(z) in Exhibit 5. Because Amendment No. 1 does not materially alter the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment.

<sup>6</sup> EDGX Rule 1.5(cc) defines “System” as “the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.”

<sup>7</sup> EDGX Rule 1.5(aa) defines “Sponsoring Member” as “a Member that is a registered broker-dealer and that has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System.”

<sup>8</sup> See EDGX Rule 11.3(b).

<sup>9</sup> See Notice, *supra* note 4, at 40393.

<sup>10</sup> See EDGX Rule 11.3(b)(3).

<sup>11</sup> See EDGX Rule 1.5(z); Amendment No. 1 at 4.

<sup>12</sup> 17 CFR 240.15c3-5. See Notice, *supra* note 4, at 40393. EDGX proposes to delete the provisions in Rule 11.3(b)(2)(A)–(I), the second sentence of Rule 11.3(b)(1), and Rule 11.3(b)(3).

<sup>13</sup> EDGX Rule 1.5(n) defines “Member” as “any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.”

<sup>14</sup> EDGX Rule 1.5(ee) defines “User” as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.”

<sup>15</sup> See EDGX Rule 11.3(a).

<sup>16</sup> See EDGX Rule 11.3(b)(1).

<sup>17</sup> See Notice, *supra* note 4, at 40394.

Sponsoring Members and Sponsored Participants under the Exchange's rules, the financial and regulatory risk management controls and supervisory procedures required by Rule 15c3-5 under the Act<sup>25</sup> apply broadly to all forms of market access by broker-dealers that are exchange members or alternative trading system ("ATS") subscribers, including sponsored access, direct market access, and more traditional agency brokerage arrangements with customers, as well as proprietary trading.<sup>26</sup> The application of appropriate risk management controls and supervisory procedures required by Rule 15c3-5 under the Act<sup>27</sup> is critically important to maintaining a robust market infrastructure supporting the protection of investors, investor confidence, and fair, orderly, and efficient markets for all participants.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-EDGX-2012-24), as modified by Amendment No. 1 thereto, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-21108 Filed 8-27-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67712; File No. SR-EDGA-2012-27]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend EDGA Rules Regarding Market Access

August 22, 2012.

#### I. Introduction

On June 22, 2012, EDGA Exchange, Inc. ("Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend EDGA rules regarding market access for Sponsored

Participants.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on July 9, 2012.<sup>4</sup> The Commission received no comment letters regarding the proposed rule change. On July 31, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

#### II. Description of the Proposal

EDGA Rule 11.3(b) sets forth the requirements for Sponsored Participants to obtain authorized access to the Exchange's System.<sup>6</sup> A Sponsored Participant may obtain authorized access by entering into and maintaining customer agreements with one or more Sponsoring Members<sup>7</sup> through which the Sponsored Participant may trade on the Exchange's System.<sup>8</sup> The customer agreements must incorporate the provisions of Rule 11.3(b)(2).<sup>9</sup> In addition, the Sponsoring Member must provide EDGA with a written statement identifying each Sponsored Participant by name and acknowledging its responsibility for the orders, executions, and actions of the Sponsored Participants.<sup>10</sup>

EDGA proposes to amend Rule 1.5(z), defining Sponsored Participant, and Rule 11.3(b), related to access by Sponsored Participants, to clarify the obligations of Sponsoring Members and Sponsored Participants. EDGA proposes to define Sponsored Participant as "a person which has entered into an arrangement with one or more Sponsoring Members whereby such person obtains authorized access to the System in accordance with Rule 11.3."<sup>11</sup> In addition, EDGA proposes to

<sup>3</sup> EDGA Rule 1.5(z) defines "Sponsored Participant" as "a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3." As discussed below, the Exchange proposes to amend the definition of Sponsored Participant as part of the instant proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 67332 (July 2, 2012), 77 FR 40396 ("Notice").

<sup>5</sup> In Amendment No. 1, the Exchange made a technical change to Rule 1.5(z) in Exhibit 5. Because Amendment No. 1 does not materially alter the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment.

<sup>6</sup> EDGA Rule 1.5(cc) defines "System" as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away."

<sup>7</sup> EDGA Rule 1.5(aa) defines "Sponsoring Member" as "a Member that is a registered broker-dealer and that has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System."

<sup>8</sup> See EDGA Rule 11.3(b).

<sup>9</sup> See Notice, *supra* note 4, at 40397.

<sup>10</sup> See EDGA Rule 11.3(b)(3).

<sup>11</sup> See EDGA Rule 1.5(z); Amendment No. 1 at 4.

delete certain contractual provisions under Rule 11.3(b) that EDGA believes are no longer necessary given the obligations applicable to Sponsoring Members under Rule 15c3-5 under the Act ("Market Access Rule").<sup>12</sup> The Exchange also proposes to amend Rule 11.3(a) to require that only Members,<sup>13</sup> and not Users<sup>14</sup> (which includes Members as well as their Sponsored Participants), enter into agreements with the Exchange to obtain authorized access to EDGA's System.<sup>15</sup> Sponsored Participants, in turn, must enter into and maintain sponsored or direct access arrangements with one or more Sponsoring Members establishing the proper relationship(s) and account(s) through which the Sponsored Participants may trade on the Exchange's System.<sup>16</sup>

EDGA also proposes amendments to maintain transparency into who is accessing the Exchange's System.<sup>17</sup> Sponsoring Members will need to maintain a list of Sponsored Participants authorized to access the Exchange's System pursuant to Rule 11.3, update that list as necessary, and provide the list to the Exchange upon request.<sup>18</sup> In addition, the Exchange proposes to require that Sponsoring Members shall comply with all requirements of Rule 15c3-5 under the Act<sup>19</sup> with regard to market access arrangements with Sponsored Participants.<sup>20</sup>

<sup>12</sup> 17 CFR 240.15c3-5. See Notice, *supra* note 4, at 40397. EDGA proposes to delete the provisions in Rule 11.3(b)(2)(A)-(I), the second sentence of Rule 11.3(b)(1), and Rule 11.3(b)(3).

<sup>13</sup> EDGA Rule 1.5(n) defines "Member" as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange."

<sup>14</sup> EDGA Rule 1.5(ee) defines "User" as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

<sup>15</sup> See EDGA Rule 11.3(a).

<sup>16</sup> See EDGA Rule 11.3(b)(1).

<sup>17</sup> See Notice, *supra* note 4, at 40397.

<sup>18</sup> See EDGA Rule 11.3(b)(2). EDGA is retaining the requirement in Rule 11.4(a) that all Members maintain a list of Authorized Traders who may obtain access to the System on behalf of the Member or the Member's Sponsored Participants, and provide that list to the Exchange upon request. See Notice, *supra* note 4, at 40397.

<sup>19</sup> See 17 CFR 240.15c3-5. Rule 15c3-5 is designed to ensure that broker-dealers appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, or the stability of the financial system. See Risk Management Controls for Brokers or Dealers with Market Access, Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) ("Market Access Rule Adopting Release").

<sup>20</sup> See EDGA Rule 11.3(b)(3).

<sup>25</sup> 17 CFR 240.15c3-5.

<sup>26</sup> See Market Access Rule Adopting Release, *supra* note 19, 75 FR at 69798.

<sup>27</sup> 17 CFR 240.15c3-5.

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>21</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>22</sup> which requires, among other things, that the rules of a national securities exchange be 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 a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the instant proposed rule change is consistent with the Act. The Commission notes that the Exchange believes the proposal should serve to eliminate potential confusion regarding the obligations of Sponsoring Members and Sponsored Participants under Exchange rules. In addition, the Commission notes that the Exchange proposes to require Sponsoring Members to comply with Rule 15c3-5 under the Act<sup>23</sup> with regard to market access arrangements with Sponsored Participants.<sup>24</sup> In this regard, the Commission notes that although the proposal relates to obligations of Sponsoring Members and Sponsored Participants under the Exchange's rules, the financial and regulatory risk management controls and supervisory procedures required by Rule 15c3-5 under the Act<sup>25</sup> apply broadly to all forms of market access by broker-dealers that are exchange members or alternative trading system ("ATS") subscribers, including sponsored access, direct market access, and more traditional agency brokerage arrangements with customers, as well as proprietary trading.<sup>26</sup> The application of appropriate risk management controls and supervisory procedures required by Rule 15c3-5 under the Act<sup>27</sup> is critically important to maintaining a robust market infrastructure supporting the protection of investors, investor

confidence, and fair, orderly, and efficient markets for all participants.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-EDGA-2012-27), as modified by Amendment No. 1 thereto, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-21109 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67714; File No. SR-NYSEArca-2012-87]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Options Rule 6.40 To Expand the Existing Market Maker Risk Limitation Mechanism Making It Available for Orders From Market Makers as Well as Non-Market Maker OTP Firms and OTP Holders, and To Provide for Two Additional Risk Limitation Mechanisms

August 22, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 10, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Options Rule 6.40 to expand the existing Market Maker Risk Limitation Mechanism to make it available for orders from Market Makers as well as non-Market Maker OTP Firms and OTP Holders, and to provide for two additional risk limitation

mechanisms. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange adopted the existing Market Maker Risk Limitation Mechanism to provide a transaction-based mechanism for limiting a Market Maker's risk during periods of increased and significant trading activity on the Exchange in the Market Maker's appointment.<sup>4</sup> The Exchange now proposes to expand the existing Market Maker Risk Limitation Mechanism to make it available for orders from Market Makers as well as orders from non-Market Maker OTP Firms and OTP Holders ("non-Market Makers"),<sup>5</sup> and to provide for two additional risk limitation mechanisms (collectively, the "Risk Limitation Mechanisms"). The Exchange is proposing these changes to permit Market Makers and non-Market Makers to better manage the risk of multiple, nearly simultaneous executions against their proprietary interest that, in today's highly automated and electronic trading environment, can occur across multiple series of different option classes. Consistent with the ability to better manage risk, the Exchange anticipates that these changes could enhance the Exchange's overall market quality as a result of narrowed quote widths and

<sup>21</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 17 CFR 240.15c3-5.

<sup>24</sup> See EDGA Rule 11.3(b)(3).

<sup>25</sup> 17 CFR 240.15c3-5.

<sup>26</sup> See Market Access Rule Adopting Release, *supra* note 19, 75 FR at 69798.

<sup>27</sup> 17 CFR 240.15c3-5.

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR-NYSEArca-2006-13).

<sup>5</sup> The Exchange proposes to specify within NYSE Arca Options Rule 6.40(a) that non-Market Maker OTP Firms and OTP Holders will be referred to as "non-Market Makers" for purposes of NYSE Arca Options Rule 6.40.

increased liquidity for series traded on the Exchange.

As noted above, the Exchange is proposing to make the three Risk Limitation Mechanisms available to non-Market Makers. The Exchange is proposing this change to respond to requests from non-Market Makers that engage in rapid, proprietary trading. In this regard, non-Market Makers can have risk exposure similar to that of Market Makers, and have similarly sought ways to mitigate this risk. The Exchange believes that making the Risk Limitation Mechanisms available to non-Market Makers will assist them in these efforts.

As is the case today with the Market Maker Risk Limitation Mechanism, the trade counters, and therefore the Risk Limitation Mechanisms themselves, would be based on trading permit identification ("TPID").<sup>6</sup> As is also the case today with respect to the existing Market Maker Risk Limitation Mechanism, Market Makers would be required to activate one of the three Risk Limitation Mechanisms at all times for their quotes for each class in their appointment. However, the Risk Limitation Mechanisms would be entirely voluntary with respect to orders, both for those of Market Makers and non-Market Makers. Market Makers and non-Market Makers would only be permitted to activate one of the three Risk Limitation Mechanisms for a particular class at any given time for their orders. However, a Market Maker could activate one Risk Limitation Mechanism for its quotes and a different Risk Limitation Mechanism for its orders, even if both are activated for the same class.<sup>7</sup> The three mechanisms are described in greater detail below.

#### (1) Transaction-Based Risk Limitation Mechanism

The existing Market Maker Risk Limitation Mechanism is transaction-based and automatically cancels all quotes posted by a Market Maker in an appointed class if the trade counter determines that "n" executions within one second have occurred against the quotes of the Market Maker in the particular appointed class.

<sup>6</sup> TPIDs are assigned to Market Makers and non-Market Makers to identify them in the Exchange's systems.

<sup>7</sup> Market Makers on the Exchange are not able to submit orders on an agency basis. Therefore, a Market Maker within an OTP Firm that conducts both an agency and a market making business would have a unique TPID that could only be used for that Market Maker's quotes and orders. The proposed rule change would not prevent the use of the Risk Limitation Mechanisms for a non-Market Maker's agency order flow.

The Exchange proposes to amend NYSE Arca Options Rule 6.40(b) to apply the existing Market Maker Risk Limitation Mechanism not only to Market Maker quotes, but also to non-Market Maker and Market Maker orders. As proposed, and similar to the existing process for Market Maker quotes,<sup>8</sup> the Transaction-Based Risk Limitation Mechanism would be triggered for a non-Market Maker whenever a trade counter has reached "n" executions within a time period specified by the Exchange via Regulatory Bulletin, as discussed further below, against the non-Market Maker's orders in a specified class. For Market Maker orders, the Transaction-Based Risk Limitation Mechanism would be triggered when a trade counter has reached "n" executions within a time period specified by the Exchange against the Market Maker's orders in a specified class. Accordingly, "Market Maker" would be deleted from the title of NYSE Arca Options Rule 6.40, as would any other references that would limit NYSE Arca Options Rule 6.40 only to Market Makers. Additionally, references to "Transaction-Based" would be added to NYSE Arca Options Rule 6.40(b) to differentiate the existing mechanism from the newly proposed Risk Limitation Mechanisms, as discussed in greater detail below. Additionally, much of the existing text of NYSE Arca Options Rule 6.40(b) through (f) would be relocated as new Commentary to NYSE Arca Options

<sup>8</sup> The existing Market Maker quote aspect of the mechanism would be renumbered as NYSE Arca Options Rule 6.40(b)(3) and would be triggered when a trade counter has reached "n" executions within a time period specified by the Exchange against the Market Maker's quotes in an appointed class. As proposed under new Commentary .03 to NYSE Arca Options Rule 6.40, the Exchange would announce via Regulatory Bulletin the applicable time period(s) for the Risk Limitation Mechanisms proposed under NYSE Arca Options Rule 6.40. The Exchange also proposes to specify under Commentary .03 that the Exchange will not specify a time period of less than 100 milliseconds. Additionally, the Exchange anticipates announcing via Regulatory Bulletin, as described in proposed Commentary .03, that the minimum, maximum and default settings for "n," as well as the potential range for such settings, that are in effect at the time the Exchange implements this proposed change, will continue to apply to the Transaction-Based Risk Limitation Mechanism in the future. In this regard, the Exchange notes that it recently amended current Rule 6.40(b)(1) to specify that the potential range for the settings applicable to the existing Market Maker Risk Limitation Mechanism will be between one and 100 executions per second, to eliminate the current reference to the default setting, and, in the future, to specify the applicable minimum, maximum and default settings via Regulatory Bulletin. See Securities Exchange Act Release No. 67498 (July 25, 2012), 77 FR 45401 (July 31, 2012) (SR-NYSEArca-2012-76).

Rule 6.40, as discussed in greater detail below.

#### (2) Volume-Based Risk Limitation Mechanism

The Exchange proposes to provide for a new Volume-Based Risk Limitation Mechanism under NYSE Arca Options Rule 6.40(c). The proposed Volume-Based Risk Limitation Mechanism would be triggered whenever one of the following conditions is met: (1) For a non-Market Maker, when a trade counter has reached "k" contracts traded within a time period specified by the Exchange against the non-Market Maker's orders in a specified class; (2) for a Market Maker, when a trade counter has reached "k" contracts traded within a time period specified by the Exchange against the Market Maker's orders in a specified class; or (3) for a Market Maker, when a trade counter has reached "k" contracts traded within a time period specified by the Exchange against the Market Maker's quotes in an appointed class.<sup>9</sup>

#### (3) Percentage-Based Risk Limitation Mechanism

The Exchange proposes to provide for a new Percentage-Based Risk Limitation Mechanism under NYSE Arca Options Rule 6.40(d).<sup>10</sup> The proposed Percentage-Based Risk Limitation Mechanism would be triggered whenever one of the following conditions is met: (1) For a non-Market Maker, when a trade counter has calculated that the non-Market Maker has traded "p" percentage within a time period specified by the Exchange against the non-Market Maker's orders in a specified class; (2) for a Market Maker, when a trade counter has calculated that the Market Maker has traded "p" percentage within a time period specified by the Exchange against the Market Maker's orders in a specified class; or (3) for a Market Maker, when a trade counter has calculated that the Market Maker has traded "p" percentage within a time period specified by the Exchange against the Market Maker's quotes in an appointed class.<sup>11</sup> The "p" percentage

<sup>9</sup> The Exchange anticipates announcing via Regulatory Bulletin that the applicable minimum and maximum settings for "k" (as well as the potential range for the settings applicable to the Volume-Based Risk Limitation Mechanism) will be 20 and 5,000, respectively.

<sup>10</sup> The proposed Percentage-Based Risk Limitation Mechanism is partially based on NASDAQ OMX PHLX ("PHLX") Rule 1093. See Securities Exchange Act Release No. 53166 (January 23, 2006), 71 FR 4625 (January 27, 2006) (SR-PHLX-2006-05).

<sup>11</sup> The Exchange anticipates announcing via Regulatory Bulletin that the applicable minimum

specified by the non-Market Maker or Market Maker would be calculated as follows (and as shown in the examples below):<sup>12</sup> (1) A trade counter would first calculate, for each series of an option class, the percentage of a non-Market Maker's or Market Maker's order size or a Market Maker's quote size that is

executed on each side of the market, including both displayed and non-displayed size, and (2) a trade counter would then sum the overall series percentages for the entire option class to calculate the "p" percentage.

Example 1

For Examples 1 and 2, if a Market Maker is quoting at the National Best Bid or Offer ("NBBO") in four series of an appointed class, and specifies its "p" percentage at 100%, a trade counter would calculate such percentage as follows:

Series	Quote size	Number of contracts executed	Series percentage
Series 1 .....	100	40	40
Series 2 .....	50	20	40
Series 3 .....	200	20	10
Series 4 .....	150	15	10
Total .....	500	95	100

In Example 1, the aggregate number of contracts executed among all series during the time period specified by the Exchange that equals the specified

percentage of 100% is 95 contracts, at which point the Percentage-Based Risk Limitation Mechanism would be triggered and the Market Maker's

remaining quotes in the appointed class would be cancelled.

Example 2

Series	Quote size	Number of contracts executed	Series percentage
Series 1 .....	100	0	0
Series 2 .....	50	0	0
Series 3 .....	200	0	0
Series 4 .....	150	150	100
Total .....	500	150	100

In Example 2, the aggregate number of contracts executed among all series during the time period specified by the Exchange that equals the specified percentage of 100% is 150 contracts, at which point the Percentage-Based Risk Limitation Mechanism would be

triggered and the Market Maker's remaining quotes in the appointed class would be cancelled.

particular option class, and specifies its "p" percentage at 200%, a trade counter would calculate such percentage as follows:

Example 3

For Example 3, if a Market Maker is quoting at the NBBO in four series of a

Series	Quote size	Number of contracts executed	Series percentage
Series 1 .....	100	80	80
Series 2 .....	50	40	80
Series 3 .....	200	40	20
Series 4 .....	150	30	20
Total .....	500	190	200

In Example 3, the aggregate number of contracts executed among all series during the time period specified by the Exchange that equals the specified percentage of 200% is 190 contracts, at which point the Percentage-Based Risk Limitation Mechanism would be triggered and the Market Maker's

remaining quotes in the appointed class would be cancelled.

Trade Counter

The trade counters serve as the basis for determining whether a Risk Limitation Mechanism is triggered. NYSE Arca Options Rule 6.40(a) currently describes the existing trade

counter, which is incremented every time a Market Maker executes a trade against its quote in any series in an appointed class. The Exchange proposes to amend NYSE Arca Options Rule 6.40(a) to reflect that the existing trade counter will be replaced by separate trade counters that the NYSE Arca System will maintain for each of the

and maximum settings for "p" (as well as the potential range for the settings applicable to the

Percentage-Based Risk Limitation Mechanism) will be 100 and 2,000, respectively.

<sup>12</sup> The examples provided below are for Market Maker quotes, but would similarly apply to non-Market Maker and Market Maker orders.

following scenarios: (1) When a non-Market Maker order is executed in any series in a specified class;<sup>13</sup> (2) when a Market Maker order is executed in any series in a specified class; and (3) when a Market Maker quote is executed in any series in an appointed class. The Exchange also proposes to reflect that for each of these scenarios the trade counters will be incremented by one every time a trade is executed and will also aggregate the number of contracts traded during each such execution. The trade counters will also calculate applicable percentages for Market Makers and non-Market Makers using the proposed Percentage-Based Risk Limitation Mechanism. These proposed changes to NYSE Arca Options Rule 6.40(a) are necessary due to the changes proposed below.

#### General

As proposed under new Commentary .01 to NYSE Arca Options Rule 6.40, and similar to the current description in existing NYSE Arca Options Rule 6.40(b), the NYSE Arca System would automatically cancel electronic orders or quotes pursuant to proposed paragraph (e) of NYSE Arca Options Rule 6.40<sup>14</sup> by generating a “bulk cancel” message.<sup>15</sup> Similar to the current description in existing NYSE Arca Options Rule 6.40(c), the bulk cancel message would be processed by the NYSE Arca System in time priority with any other quote or order message received by the NYSE Arca System. Additionally, any orders or quotes that matched with a Market Maker’s quote or a Market Maker’s or non-Market Maker’s order and were received by the NYSE Arca System prior to the receipt of the bulk cancel message would be

automatically executed. However, orders or quotes received by the NYSE Arca System after receipt of the bulk cancel message would not be executed. In this regard, the proposed rule change would not relieve a non-Market Maker or Market Maker of its “firm quote” obligation under Rule 602 of Regulation NMS<sup>16</sup> or NYSE Arca Options Rule 6.86. Furthermore, the proposed rule change would not relieve Market Makers on the Exchange of their quoting obligations under the Exchange’s Rules.<sup>17</sup>

As proposed under new Commentary .02 to NYSE Arca Options Rule 6.40, and similar to the current description in NYSE Arca Options Rule 6.40(d), if one of the Risk Limitation Mechanisms is triggered pursuant to proposed paragraph (b)(1) or (2), (c)(1) or (2), or (d)(1) or (2) of NYSE Arca Options Rule 6.40, any orders sent by the non-Market Maker or Market Maker, respectively, in the specified class would be rejected until the non-Market Maker or Market Maker submits a message to the NYSE Arca System to enable the entry of new orders. Similarly, if one of the Risk Limitation Mechanisms is triggered pursuant to proposed paragraph (b)(3), (c)(3), or (d)(3) of NYSE Arca Options Rule 6.40, any quotes sent by the Market Maker in the appointed class would be rejected until the Market Maker submits a message to the NYSE Arca System to enable the entry of new quotes.

As proposed under new Commentary .03 to NYSE Arca Options Rule 6.40, the Exchange would specify via Regulatory Bulletin any applicable minimum, maximum and/or default settings for the Risk Limitation Mechanisms proposed under NYSE Arca Options Rule 6.40.<sup>18</sup>

<sup>16</sup> 17 CFR 242.602.

<sup>17</sup> See, e.g., NYSE Arca Options Rule 6.37B.

<sup>18</sup> The Exchange will issue the Regulatory Bulletin at least one trading day in advance of the settings becoming effective. All such Regulatory Bulletins will contain information regarding changes to the settings in the Risk Limitation Mechanisms, the effective date of such changes and contact information of Exchange staff who can provide additional information. The Exchange distributes Regulatory Bulletins simultaneously to all OTP Holders and OTP Firms via email and posts the Regulatory Bulletins to the Exchange’s Web site.

Upon receiving notification of a change to the settings for the Risk Limitation Mechanisms by the Exchange, OTP Holders and OTP Firms will be able to make adjustments they deem necessary to their own risk settings for the Risk Limitation Mechanisms using the same electronic interface that they use to send quotes and orders to the Exchange. In addition, OTP Holders and OTP Firms may elect to adjust risk settings in their own proprietary systems in reaction to any changes initiated by the Exchange. When adjusting risk parameters for the Risk Limitation Mechanisms and/or a proprietary system, in reaction to a change to the risk settings by the Exchange, OTP Holders and OTP Firms are able to utilize functionality that is both readily available and user controlled.

This would include those settings that are applicable for the existing Market Maker Risk Limitation Mechanism at the time the Exchange implements this proposed change, which, as discussed above, would be renamed as the Transaction-Based Risk Limitation Mechanism, as well as for the proposed new Volume-Based and Percentage-Based Risk Limitation Mechanisms.<sup>19</sup> Accordingly, the text proposed within Commentary .03 is designed to conform to the text that is currently provided under Rule 6.40(b)(1).<sup>20</sup> The Exchange also proposes to specify under Commentary .03 that the Exchange will not (i) specify a minimum setting of less than one or a maximum setting of more than 100 for the Transaction-Based Risk Limitation Mechanism; (ii) specify a minimum setting of less than 20 or a maximum setting of more than 5,000 for the Volume-Based Risk Limitation Mechanism; or (iii) specify a minimum setting of less than 100 or a maximum setting of more than 2,000 for the Percentage-Based Risk Limitation Mechanism. Similarly, as proposed under new Commentary .03 to NYSE Arca Options Rule 6.40, the Exchange would specify via Regulatory Bulletin the applicable time period(s) for the Risk Limitation Mechanisms proposed under NYSE Arca Options Rule 6.40. The Exchange also proposes to provide under Commentary .03 that the Exchange will not specify a time period of less than 100 milliseconds.

As proposed under new Commentary .04 to NYSE Arca Options Rule 6.40, once a Market Maker activates a Risk Limitation Mechanism provided under NYSE Arca Options Rule 6.40 for its quotes in an appointed class, the mechanism, and the settings established by the Market Maker, would remain active unless, and until, the Market Maker deactivates the mechanism or changes the settings.<sup>21</sup> A non-Market

Accordingly, the Exchange believes that providing OTP Holders and OTP Firms with at least one day’s advance notice prior to making adjustments to the settings of the Risk Limitation Mechanisms will afford OTP Holders and OTP Firms sufficient time to review their risk settings and make operational and/or technological changes, to either the user controlled risk settings for the Risk Limitation Mechanisms or to their own proprietary systems, necessary to accommodate any such changes made by the Exchange.

<sup>19</sup> See *supra* notes 8, 9, and 11. The default settings would apply only to Market Makers using the Transaction-Based Risk Limitation Mechanism, and further would apply only with respect to a Market Maker’s quotes, not its orders.

<sup>20</sup> See Securities Exchange Act Release No. 67498 (July 25, 2012), 77 FR 45401 (July 31, 2012) (SR–NYSEArca–2012–76).

<sup>21</sup> As noted above, a Market Maker must have one of the three Risk Limitation Mechanisms active for its quotes at all times for each class in its

<sup>13</sup> The Exchange proposes to include the concept of a “specified class” to reflect that Market Makers and non-Market Makers must specify the class(es) for which a Risk Limitation Mechanism is activated for orders or none of the Risk Limitation Mechanisms will be activated.

<sup>14</sup> As proposed under NYSE Arca Options Rule 6.40(e), the NYSE Arca System would take the following action if one of the Risk Limitation Mechanisms described herein is triggered: (1) If triggered pursuant to proposed paragraph (b)(1), (c)(1) or (d)(1) of NYSE Arca Options Rule 6.40, the NYSE Arca System would automatically cancel all of the non-Market Maker’s orders in the specified class; (2) if triggered pursuant to proposed paragraph (b)(2), (c)(2) or (d)(2) of NYSE Arca Options Rule 6.40, the NYSE Arca System would automatically cancel all of the Market Maker’s orders in the specified class; or (3) if triggered pursuant to proposed paragraph (b)(3), (c)(3) or (d)(3) of NYSE Arca Options Rule 6.40, the NYSE Arca System would automatically cancel all of the Market Maker’s quotes in the appointed class.

<sup>15</sup> As is the case today for the existing Market Maker Risk Limitation Mechanism, the Risk Limitation Mechanisms provided under NYSE Arca Options Rule 6.40 would only be applicable to electronic trading on the Exchange.

Maker or Market Maker must activate a Risk Limitation Mechanism provided under NYSE Arca Options Rule 6.40 for its orders in a specified class, and any corresponding settings, on a daily basis, if at all, or the Risk Limitation Mechanism would not be active. As is the case today for the existing Market Maker Risk Limitation Mechanism, the Risk Limitation Mechanisms provided under NYSE Arca Options Rule 6.40 would be in effect, if activated by a non-Market Maker or Market Maker, during Core Trading Hours,<sup>22</sup> including during Trading Auctions (i.e., executions during a Trading Auction would be counted by the trade counters).<sup>23</sup>

As proposed under new Commentary .05 to NYSE Arca Options Rule 6.40, and similar to the current description under NYSE Arca Options Rule 6.40(f), in the event that there are no Market Makers quoting in a class, the best bids and offers of those orders residing in the Consolidated Book in the class shall be disseminated as the Exchange's best bid or best offer. If there are no Market Makers quoting in the class and there are no orders in the Consolidated Book in the class, the NYSE Arca System would disseminate a bid of zero and an offer of zero.

As proposed under new Commentary .06 to NYSE Arca Options Rule 6.40, the trade counters would automatically reset and commence a new count (1) when a time period specified by the Exchange elapses, or (2) if one of the Risk Limitation Mechanisms provided under NYSE Arca Options Rule 6.40 is triggered for a particular class, when the non-Market Maker or Market Maker submits a message to the NYSE Arca System to enable the entry of new orders or quotes, as provided in proposed Commentary .02 to Rule 6.40.

As proposed under new Commentary .07 to NYSE Arca Options Rule 6.40, only executions against order types specified by the Exchange via Regulatory Bulletin and against quotes of Market Makers would be considered

appointment. Therefore, if a Market Maker deactivates a Risk Limitation Mechanism, it must then activate another Risk Limitation Mechanism for a particular class.

<sup>22</sup> See NYSE Arca Options Rule 6.1A(3).

<sup>23</sup> See NYSE Arca Options Rule 6.64. For example, and as discussed above with respect to the bulk cancel message, an order or quote that matches with a non-Market Maker's or Market Maker's order or a Market Maker's quote during a Trading Auction, but prior to the receipt of the bulk cancel message by the NYSE Arca System, would be executed. However, an order or quote received by the NYSE Arca System during a Trading Auction, but after receipt of the bulk cancel message, would not be eligible for execution against the non-Market Maker's or Market Maker's orders or the Market Maker's quotes.

by a trade counter.<sup>24</sup> Executions against Market Maker orders would not be considered by a trade counter in connection with a Market Maker's quoting activity. Likewise, executions against Market Maker quotes would not be considered by a trade counter in connection with a Market Maker's order activity. The Exchange believes that specifying applicable order types via Regulatory Bulletin, including any changes thereto in the future, (i) would be consistent with the manner in which the Exchange currently announces the applicable minimum, maximum and default settings for the Risk Limitation Mechanisms;<sup>25</sup> (ii) would be consistent with the manner in which the Exchange proposes to announce the applicable time period(s) for the Risk Limitation Mechanisms; and (iii) would also be consistent with the manner in which the Commission currently permits other option exchanges to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, i.e., via notices, bulletins or circulars.<sup>26</sup>

<sup>24</sup> Due to technology considerations, the Exchange plans to initially apply the Risk Limitation Mechanisms only to the following order types: "PNP Orders," "PNP-Blind Orders," and "PNP-Light Orders." The Exchange has selected these particular order types because they are the most commonly used order types of non-Market Makers engaged in proprietary trading. In this respect, non-Market Makers use these order types because they are non-routable Limit Orders that are only executed on the Exchange. In the future, the Exchange may determine to expand the Risk Limitation Mechanisms to other order types used by such firms, and it would announce any such changes via Regulatory Bulletin pursuant to proposed Commentary .07 to NYSE Arca Options Rule 6.40.

<sup>25</sup> See *supra* notes 8, 9 and 11.

<sup>26</sup> See, e.g., BOX Options Exchange LLC ("BOX") Rule 8140, which provides that, related to BOX's Quote Removal Mechanism Upon Technical Disconnect, BOX Market Makers will be notified of the value that "n" seconds represents via Regulatory Circular. See also Securities Exchange Act Release No. 58140 (July 10, 2008), 73 FR 41384 (July 18, 2008) (SR-BSE-2008-40), in which the Commission noted that "n" seconds would be configurable by BOX and any subsequent re-configurations will be announced to Market Makers via Regulatory Circular. See also Interpretation and Policy .05 to Chicago Board Options Exchange ("CBOE") Rule 6.74A, which provides that any determinations made by CBOE regarding CBOE's Automated Improvement Mechanism, such as eligible classes, order size parameters and the minimum price increment for certain responses, shall be communicated in a Regulatory Circular. See also CBOE Rule 6.13(b)(i)(C)(2)(a), which provides that CBOE may establish certain maximum order size eligibility requirements with respect to automatic executions and announce such determinations via Regulatory Circular. See also CBOE Rules 6.45A and 6.45B, which provide that CBOE will issue a Regulatory Circular to specify certain priority-related information, including specifying which priority rules will govern which classes of options any time CBOE changes the priority. See also CBOE Rule 6.25(a)(4)(i), which

As proposed under new Commentary .08 to NYSE Arca Options Rule 6.40, a determination of whether the conditions of proposed paragraph (b), (c) or (d) of NYSE Arca Options Rule 6.40 have been met, and any resulting cancellation of orders or quotes pursuant to proposed paragraph (e) of NYSE Arca Options Rule 6.40, shall be made on the basis of TPID.<sup>27</sup> For example,<sup>28</sup> a non-Market Maker that submits orders to the Exchange under separate TPIDs would not have the orders from each TPID aggregated for purposes of the Risk Limitation Mechanisms. Instead, the orders attributable to each TPID would be counted by the trade counters separately, and the triggering of a Risk Limitation Mechanism for one of the non-Market Maker's TPIDs would not result in a trigger of a Risk Limitation Mechanism for the other TPID of the non-Market Maker. Also, as noted above, a non-Market Maker or a Market Maker could activate no more than one of the three Risk Limitation Mechanisms for a particular class for its orders and a Market Maker would be required to have exactly one of the three Risk Limitation Mechanisms activated at all times for its quotes for each class in its appointment. However, a Market Maker could activate one Risk Limitation Mechanism for its quotes and a different Risk Limitation Mechanism for its orders, even if both are activated for the same class.

Finally, as proposed under new Commentary .09 to NYSE Arca Options Rule 6.40 the terms "class" and "classes" include all option series, both puts and calls, overlying the same underlying security. The purpose of Commentary .09 is to eliminate any potential confusion as to the scope of the proposed Risk Limitation Mechanisms.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>29</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>30</sup> in particular,

provides that, for purposes of nullifying a trade due to an erroneous print in an underlying or related instrument, CBOE may announce such underlying or related instrument via Regulatory Circular. See also C2 Options Exchange ("C2") Rule 6.13, which provides that C2 may make certain determinations regarding the price check parameter feature and announce such determinations via Regulatory Circular. See also Securities Exchange Act Release No. 65311 (September 9, 2011), 76 FR 57094 (September 15, 2011) (SR-C2-2011-018).

<sup>27</sup> See *supra* notes 6 and 7.

<sup>28</sup> This example would similarly be applicable to Market Makers.

<sup>29</sup> 15 U.S.C. 78f(b).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

because is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change would prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade because it would provide non-Market Makers and Market Makers with greater control and flexibility with respect to managing risk and the manner in which they enter orders and quotes. This would be accomplished by expanding the existing Market Maker Risk Limitation Mechanism to Market Maker orders and the orders of non-Market Makers as well as through the creation of the proposed new Volume-Based and Percentage-Based Risk Limitation Mechanisms. Increased control and flexibility would also be accomplished by lowering the minimum time period applicable to the Risk Limitation Mechanisms, as compared to the existing Market Maker Risk Limitation Mechanism, from one second to no less than 100 milliseconds. In this regard, the Exchange believes that a lower minimum time period would be more consistent with the rapid trading that occurs in today's highly automated and electronic trading environment. The Exchange also believes that the increased control and flexibility that would result from this proposal would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities.

The Exchange further believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because it would promote consistency, fairness, and objectivity by making the Risk Limitation Mechanisms available to all non-Market Makers and Market Makers, which therefore may enhance the Exchange's overall market quality. The Exchange believes that the potential increase in the Exchange's overall market quality that could result from the Risk Limitation Mechanisms could

therefore contribute to the protection of investors and the public interest.

The Exchange further believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because it would permit the Exchange to announce the minimum, maximum and default settings for the Risk Limitation Mechanisms, as well as any applicable time period(s) and order types, via Regulatory Bulletin. The Exchange believes that the flexibility of announcing these details via Regulatory Bulletin is necessary because it would permit the Exchange to reasonably ensure that, for example, the applicable settings are at a level that is consistent with existing market conditions, such that the Risk Limitation Mechanisms are able to operate in the manner intended. Use of Regulatory Bulletins would also be consistent with the manner in which the Exchange currently announces the minimum, maximum and default settings for the existing Market Maker Risk Limitation Mechanism as well as the manner in which the Commission currently permits other option exchanges to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, i.e., via notices, bulletins or circulars.<sup>31</sup> Utilizing Regulatory Bulletins in this manner would, for example, permit the Exchange to increase or decrease the time period applicable to the Risk Limitation Mechanisms, should the Exchange choose to do so, to accommodate systems capacity concerns, changes in market conditions or the technology needs and considerations of Market Makers and non-Market Makers.

The Exchange also believes that the use of Regulatory Bulletins in this manner would further remove impediments to, and perfect the mechanisms of, a free and open market by reducing the resources that would otherwise be expended, by both the Exchange and the Commission, if the Exchange is required to propose a rule change with the Commission each time it wishes to change these settings. However, while the Exchange would have certain discretion with respect to the levels at which it could adjust these

<sup>31</sup> See *supra* note 26. For example, NASDAQ OMX Options Technical Update #2012-9 was recently distributed to notify participants on NASDAQ Options Market ("NOM"), PHLX and NASDAQ OMX BX Options ("BX") that, effective as of the date of the Technical Update (i.e., July 20, 2012), those markets would decrease the allowable time interval setting for the "Rapid Fire Risk Protection," from increments of one second to increments as small as 100 milliseconds.

settings, the Exchange would not be permitted to adjust the settings below the minimum levels proposed herein. The Exchange believes that this would reasonably ensure that the settings are at all times within a reasonable range.

The Exchange notes that the proposed rule change would not relieve a non-Market Maker or Market Maker of its "firm quote" obligation under Rule 602 of Regulation NMS<sup>32</sup> or NYSE Arca Options Rule 6.86, thereby contributing to the protection of investors and the public interest. In this regard, and as discussed above, the bulk cancel message generated pursuant to the Risk Limitation Mechanisms would be processed in time priority with any other quote or order message received by the NYSE Arca System. Additionally, any orders or quotes that matched with a Market Maker's quote or a Market Maker's or non-Market Maker's order and were received by the NYSE Arca System prior to the receipt of the bulk cancel message would be automatically executed. However, orders or quotes received by the NYSE Arca System after receipt of the bulk cancel message would not be executed. The Exchange further notes that the proposed rule change would not relieve Market Makers on the Exchange of their quoting obligations under the Exchange's Rules.<sup>33</sup> In this regard, and as is the case today, a Market Maker quote that is cancelled or rejected would no longer count toward satisfying the Market Maker's percentage quoting obligation under NYSE Arca Options Rule 6.37B. Additionally, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it would be applicable to, and available for, all market participants on the Exchange, including non-Market Makers and Market Makers.

#### *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.

<sup>32</sup> 17 CFR 242.602.

<sup>33</sup> See *supra* note 17.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>34</sup> and Rule 19b-4(f)(6) thereunder.<sup>35</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>36</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>37</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2012-87 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-2012-87. 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 Section, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at [www.nyse.com](http://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-2012-87 and should be submitted on or before September 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2012-21111 Filed 8-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #13230 and #13231]**

**Florida Disaster #FL-00070**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Florida dated 08/21/2012.

*Incident:* Severe Storms and Flooding.  
*Incident Period:* 06/09/2012 through 06/11/2012.

*Effective Date:* 08/21/2012.

*Physical Loan Application Deadline Date:* 10/22/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/21/2013.

**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:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Escambia.

Contiguous Counties:

Florida: Santa Rosa.

Alabama: Baldwin, Escambia.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere .....	3.875
Homeowners Without Credit Available Elsewhere .....	1.938
Businesses With Credit Available Elsewhere .....	6.000
Businesses Without Credit Available Elsewhere .....	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	3.125
Non-Profit Organizations Without Credit Available Elsewhere .....	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere .....	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13230 6 and for economic injury is 13231 0.

The States which received an EIDL Declaration # are Florida, Alabama.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 21, 2012.

**Karen G. Mills,**  
Administrator.

[FR Doc. 2012-21099 Filed 8-27-12; 8:45 am]

**BILLING CODE 8025-01-P**

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>35</sup> 17 CFR 240.19b-4(f)(6).

<sup>36</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>37</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>38</sup> 17 CFR 200.30-3(a)(12).

## DEPARTMENT OF STATE

[Public Notice 7995]

**Announcement of the Innovation in Arms Control Challenge Under the America Competes Reauthorization Act of 2011**

**SUMMARY:** The Department of State's Bureau of Arms Control, Verification and Compliance (AVC) announces the following challenge: How Can the Crowd Support Arms Control Transparency Efforts? This challenge is the first "Innovation in Arms Control Challenge," with the goal of spurring innovation, and developing scientific and technological options that will provide additional transparency and information related to compliance with existing or future arms control, nonproliferation and disarmament regimes.

**DATES:** The submission period for entries begins 3 p.m. EDT, August 28, 2012, and ends 5 p.m. EDT, October 26, 2012. Winners will be announced during the week of December 3, unless the term of the Contest is extended by DOS.

**FOR FURTHER INFORMATION CONTACT:** Jamie Mannina, Special Assistant for Public Affairs and Public Diplomacy, U.S. Department of State, Bureau of Arms Control, Verification and Compliance, 2201 C Street NW., Washington, DC 20520; Telephone (202) 647-7939; [ManninaJF@state.gov](mailto:ManninaJF@state.gov).

**SUPPLEMENTARY INFORMATION:** This Federal Register notice is required under the Section 105 of the America COMPETES Reauthorization Act of 2011.

**Competition Details**

1. *Subject of the Challenge:* This Challenge seeks creative ideas from the general public to use the tools and devices commonly available to them to support arms control transparency efforts.

2. *Prize:* There is a guaranteed award. The winning submission will be announced in a Department of State press release. The awards will be paid to the best submission(s) as solely determined by the Department of State. The total payout will be \$10,000, with at least one award being no smaller than \$5,000 and no award being smaller than \$1,000.

3. *Challenge Rules:*

• a. *Eligibility to participate:* To be eligible to win a prize, in accordance with the America COMPETES Act, an individual or entity shall have registered to participate in the competition, comply with all

requirements and rules related to this competition, and in the case of a private entity, shall be incorporated in and maintaining a primary place of business in the United States, and in the case of an individual (participating singly or in a team) shall be a citizen or permanent resident of the United States. In addition, an individual or entity may not be a Federal entity or a Federal employee acting within the scope of their employment. An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during the competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis. While submissions from ineligible Solvers are welcome and may be the subject of further interest, these will not be eligible to receive awards. If you have a question about eligibility, please refer to the following Web site: [<https://www.innocentive.com/ar/challenge/9933144>].

• b. *Intellectual Property:* The Solvers are not required to transfer exclusive intellectual property rights to the Seeker. Rather, by submitting a proposal, the Solvers grant to the Seeker a royalty-free, perpetual, and non-exclusive license to use any information included in this proposal.

• c. *Liability:* Registered participants will be required to agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in the competition, whether the injury death, damage, or loss arises through negligence or otherwise.

• After the Challenge deadline, the Department of State will complete the review process and make a decision with regards to the Winning Solution(s) as described below. All Solvers that submitted a proposal will be notified on the status of their submissions; however, no detailed evaluation of individual submissions will be provided.

4. *Process for participants to register:* All Contest participants must enter the Challenge through the Challenge Web page on [<https://www.innocentive.com/ar/challenge/9933144>] by 5 p.m. EDT on October 26, 2012. Submissions will be accepted starting at 3 p.m. EDT on August 28, 2012. Contest participants should review all contest rules and eligibility requirements.

5. *Basis on which the winners will be selected:*

Winners will be selected based upon provision of the following:

1. *A description* of the proposed mechanism or idea to support arms control transparency efforts. Processes, incentives, and technologies must, in theory, be practical and implementable at scale throughout the world. Detailed specifications are not required, but the idea should be described well enough to evaluate feasibility.

2. *Rationale* for why the proposed idea will work in the real world as feasibility will be a major factor in the review process.

3. *Any supporting information*, publications, real-world use cases, or examples that reinforce the validity of the proposed idea.

Dated: August 16, 2012.

**Rose E. Gottemoeller,**

*Acting Under Secretary of State, Arms Control and International Security, Department of State.*

[FR Doc. 2012-21209 Filed 8-27-12; 8:45 am]

**BILLING CODE 4710-27-P**

## DEPARTMENT OF STATE

[Public Notice 7997]

**Shipping Coordinating Committee; Notice of Committee Meeting**

The Shipping Coordinating Committee (SHC) will conduct an open meeting for the International Maritime Organization's Marine Environment Protection Committee (MEPC).

The meeting will be held at 9:30 a.m. on Wednesday, September 21, 2012, in Room 2501 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC, 20593. The primary purpose of the meeting is to prepare for the sixty-fourth session of the International Maritime Organization's Marine Environment Protection Committee (MEPC 64) to be held at the International Maritime Organization in London, United Kingdom from October 1st to 5th, 2012.

The primary matters to be considered include:

- Harmful aquatic organisms in ballast water;
- Recycling of ships;
- Air pollution and energy efficiency;
- Reduction of GHG emissions from ships;
- Consideration and adoption of amendments to mandatory instruments;
- Interpretation of, and amendments to, MARPOL and related instruments;
- Implementation of the OPRC Convention and the OPRC-HNS

- Protocol and relevant Conference resolutions;
- Identification and protection of Special Areas and Particularly Sensitive Sea Areas;
- Inadequacy of reception facilities;
- Reports of sub-committees;
- Work of other bodies;
- Status of conventions;
- Harmful anti-fouling systems for ships;
- Promotion of implementation and enforcement of MARPOL and related instruments;
- Technical co-operation activities for the protection of the marine environment;
- Role of the human element;
- Noise from commercial shipping and its adverse impacts on marine life;
- Work program of the Committee and subsidiary bodies;
- Application of the Committees' Guidelines;
- Election of the Chairman and Vice-Chairman for 2013;

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Ms. Regina Bergner not later than September 11, 2012, 10 days prior to the meeting. Contact should be made by email at [Regina.R.Bergner@uscg.mil](mailto:Regina.R.Bergner@uscg.mil); by phone at (202) 372-1431; or in writing to Ms. Regina Bergner, Commandant (CG-OES-3), U.S. Coast Guard Headquarters, 2100 2nd Street SW., STOP 7126, Washington, DC 20593-7126. Requests made after September 11, 2012 might not be able to be accommodated. Please note that due to security considerations, two valid government-issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). Public parking is available in the vicinity of the Headquarters building. Additional information regarding this and other IMO SHC public meetings may be found at: [www.uscg.mil/imo](http://www.uscg.mil/imo). Hard copies of documents associated with the 64th Session of MEPC will be available at this meeting. To request further copies of documents please contact Ms. Regina Bergner using the contact information above.

Date: August 21, 2012.

**Brian W. Robinson,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 2012-21204 Filed 8-27-12; 8:45 am]

**BILLING CODE 4710-09-P**

**DEPARTMENT OF STATE**

**[Public Notice 7996]**

**Shipping Coordinating Committee; Notice of Committee Meeting**

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Thursday, September 20, 2012 in Room 5-0624 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593-0001. The primary purpose of the meeting is to prepare for the International Maritime Organization's (IMO) Diplomatic Conference for the Safety of Fishing Vessels to be held at the Cape Town International Convention Centre (CTICC), Convention Square, 1 Lower Long Street, Cape Town, South Africa, from October 9-11, 2012.

The agenda items to be considered include:

- Opening of the Conference
- Election of the President
- Adoption of the agenda
- Adoption of the Rules of Procedure
- Election of the Vice-Presidents and other officers of the Conference
- Appointment of the Credentials Committee
- Organization of the work of the Conference, including the establishment of other committees, as necessary
- Consideration of the draft Agreement on the Implementation of the Torremolinos Protocol of 1993 relating to the 1977 Torremolinos International Convention for the Safety of Fishing Vessels
- Consideration of draft resolutions and recommendations and related matters
- Consideration of the reports of the committees
- Adoption of the Final Act and any instruments, recommendations and resolutions resulting from the work of the Conference
- Signature of the Final Act of the Conference

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, LCDR Catherine Phillips, by email at [catherine.a.phillips@uscg.mil](mailto:catherine.a.phillips@uscg.mil), by phone at (202) 372-1374, by fax at (202) 372-1925, or in writing at Commandant (CG-ENG-2), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593-7126 not later than September 13, 2012, 7 days prior to the meeting.

Requests made after September 13, 2012 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: [www.uscg.mil/imo](http://www.uscg.mil/imo).

Dated: August 21, 2012.

**Brian Robinson,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 2012-21208 Filed 8-27-12; 8:45 am]

**BILLING CODE 4710-09-P**

**SUSQUEHANNA RIVER BASIN COMMISSION**

**Commission Meeting**

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** The Susquehanna River Basin Commission will hold its regular business meeting on September 20, 2012, in Harrisburg, Pennsylvania. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice.

**DATES:** September 20, 2012, at 8:30 a.m.

**ADDRESSES:** North Office Building, Hearing Room 1 (Ground Level), North Street (at Commonwealth Avenue), Harrisburg, Pa. 17120.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436.

**Opportunity To Appear and Comment**

Interested parties are invited to attend the business meeting and encouraged to review the Commission's Public Meeting Rules of Conduct, which are posted on the Commission's Web site, [www.srbc.net](http://www.srbc.net). As identified in the public hearing notice referenced below, written comments on the Regulatory Program projects that were the subject of the public hearing, and are listed for action at the business meeting, are subject to a comment deadline of September 4, 2012. Written comments pertaining to any other matters listed for action at the business meeting may be mailed to the Susquehanna River Basin

Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically through <http://www.srbc.net/pubinfo/publicparticipation.htm>. Any such comments mailed or electronically submitted must be received by the Commission on or before September 4, 2012, to be considered.

**SUPPLEMENTARY INFORMATION:** The business meeting will include actions on the following items: (1) Ratification/ approval of agreements; (2) partial waiver of application fees for withdrawn applications; (3) conditional transfer extension request of Talon Holdings, LLC related to the Hawk Valley Gold Course, Lancaster County, Pa.; (4) issuance of corrective docket to Nature's Way Purewater Systems, Inc. (Covington Springs Borehole), Dupont Borough, Luzerne County, Pa.; and (5) Regulatory Program projects. Projects listed for Commission action are those that were the subject of a public hearing conducted by the Commission on August 23, 2012, and identified in the notice for such hearing, which was published in 77 FR 44703, July 30, 2012.

**Authority:** Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: August 17, 2012.

**Thomas W. Beauduy,**  
*Deputy Executive Director.*

[FR Doc. 2012–21125 Filed 8–27–12; 8:45 am]

**BILLING CODE 7040–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Air Traffic Data in the Possession of Government Contractors

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

**ACTION:** Notice.

**SUMMARY:** The recently enacted Pilot's Bill of Rights (PBR) provides, among other things, that "air traffic data" should be made accessible to, or obtainable by, an airman in Federal Aviation Administration (FAA) investigations when such data are in the FAA's possession and the data will facilitate the individual's ability to participate in a proceeding related to an FAA investigation. Some "air traffic data" are in the possession of government contractors providing operational services to the FAA. This notice specifies how and where an airman may request the FAA's assistance in seeking "air traffic data" from government contractors.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

On August 3, 2012, the Pilot's Bill of Rights, Public Law 112–153, was enacted. The PBR requires that the FAA notify an individual who is the subject of an investigation relating to the approval, denial, suspension, modification, or revocation of an airman certificate of certain information regarding the investigation. Among other things, the PBR requires the FAA to inform the individual that he or she "is entitled to access or otherwise obtain air traffic data." The FAA may delay in providing such notification if it is determined that such notification "may threaten the integrity of an investigation."

The PBR defines "air traffic data" in the possession of the FAA to include (i) relevant air traffic communication tapes; (ii) radar information; (iii) air traffic controller statements; (iv) flight data; (v) investigative reports; and (vi) any other air traffic or flight data in the FAA's possession that would facilitate the individual's ability to productively participate in a proceeding related to the investigation. The PBR recognizes that some air traffic data are in the possession of government contractors, not the FAA. The PBR provides that an individual—who is the subject of an FAA investigation related to the approval, denial, suspension, modification, or revocation of an airman certificate—is entitled to obtain air traffic data that are "government contractor air traffic data" that would assist the individual in participating in a proceeding related to such an investigation. The PBR provides that such an individual can request that the FAA obtain air traffic data from a government contractor providing operational services to the FAA, including control towers and flight service stations. Under the law, when the FAA requests such data from a government contractor and when the contractor provides the data to the FAA, the FAA is required to transmit the data obtained from the contractor to the individual described above.

#### B. Centralized FAA Point-of-Contact for Requests for Air Traffic Data From Government Contractors

Shortly, the FAA's Internet Web page ([www.faa.gov](http://www.faa.gov)) will have a "Pilot's Bill of Rights" hyperlink. An individual who is the subject of an investigation related to the approval, denial, suspension, modification, or revocation of an airman certificate may "click" on that hyperlink on the FAA Web page to find out what information the FAA needs to process a request for air traffic data in the

possession of government contractors providing operational services to the FAA. The FAA Web site will also provide the individual with an FAA email address—[AirmenDataRequest@faa.gov](mailto:AirmenDataRequest@faa.gov)—where the airman can send his or her request for contractor air traffic data.

Because of the costs associated with storing air traffic data, much of it is destroyed or otherwise disposed of within a few days or weeks after it is generated. For an individual's request to be meaningful, it must be expeditiously received by the FAA at a centralized location by FAA personnel who are trained to process such requests, and then it must be submitted to the government contractors before those contractors destroy or otherwise dispose of air traffic data in the normal course of business. FAA personnel who are knowledgeable about government contractors that provide operational services to the FAA (including control towers and flight service stations) will check for submissions made to [AirmanDataRequest@faa.gov](mailto:AirmanDataRequest@faa.gov), and those FAA personnel will expeditiously forward such requests to the appropriate government contractor.

#### C. What Should Be Contained in the Request for Government Contractor Air Traffic Data

The PBR requires that when an individual who is the subject of an FAA investigation relating to an airman certificate requests air traffic data that are in the possession of a government contractor that provides operational services to the FAA (including control towers and flight service stations), the individual must: (1) Describe the facility at which such information is located; and (2) identify the date on which the information was generated.

Because government contractors may have a tremendous amount of air traffic data, it is important for the individual to provide as much detail as possible regarding the air traffic data being sought. Such things about the aircraft operation as the local time of day, the heading of the aircraft, and its altitude will increase the chances that the appropriate data can be located, retrieved, preserved, and transmitted in accordance with the requirements of the Pilot's Bill of Rights.

Issued in Washington, DC, on August 22, 2012.

**Peter J. Lynch,**

*Assistant Chief Counsel for Enforcement.*

[FR Doc. 2012–21145 Filed 8–27–12; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Commercial Space Transportation Advisory Committee; Open Meeting**

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

**ACTION:** Notice of Commercial Space Transportation Advisory Committee Open Meeting.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Tuesday, October 9, 2012, from 8:00 a.m. to 5:00 p.m., and Wednesday, October 10, 2012, from 8:30 a.m. to 2:15 p.m., at the National Housing Center, 1201 15th Street NW., Washington, DC, 20005. This will be the 56th meeting of the COMSTAC.

The proposed agenda for October 9 features meetings of the working groups as follows:

- Operations (8:00 a.m.–10:00 a.m.)
- Business/Legal (10:00 a.m.–12:00 p.m.)
- Systems (1:00 p.m.–3:00 p.m.)
- Export Controls (3:00 p.m.–5:00 p.m.)

The proposed agenda for October 10 features:

- Speakers relevant to the commercial space transportation industry;
- Reports and recommendations from the working groups.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or email) by October 1, 2012, so that the information can be made available to COMSTAC members for their review and consideration before the October 9 and 10, 2012, meetings. Written statements should be supplied in the following formats: One hard copy with original signature and/or one electronic copy via email.

Subject to approval, a portion of the October 10th meeting will be closed to the public (starting at approximately 3:00 p.m.).

An agenda will be posted on the FAA Web site at [www.faa.gov/go/ast](http://www.faa.gov/go/ast). For

specific information concerning the times and locations of the COMSTAC working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Susan Lender (AST-100), Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267-8029; Email [susan.lender@faa.gov](mailto:susan.lender@faa.gov). Complete information regarding COMSTAC is available on the FAA Web site at: [http://www.faa.gov/about/office\\_org/headquarters\\_offices/ast/advisory\\_committee/](http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/).

Issued in Washington, DC, August 21, 2012.

**George C. Nield,**

*Associate Administrator for Commercial Space Transportation.*

[FR Doc. 2012-21149 Filed 8-27-12; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Notice of Withdrawal of the Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed Sheep Mountain Parkway Multimodal Transportation Project, Clark County, NV**

**AGENCY:** U.S. Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Withdrawal of the Notice of Intent to prepare an EIS for Sheep Mountain Parkway Multimodal Transportation Project, which includes highway, transit, and non-motorized trail components in Clark County, Nevada.

**SUMMARY:** The FHWA is issuing this notice to advise the public that, effective immediately, the Notice of Intent (NOI) (**Federal Register** Vol. 72, No. 214; FR Doc. 07-5518) to prepare an EIS for the proposed Sheep Mountain Parkway Transportation Project, which includes highway, transit, and non-motorized trail components in Clark County, Nevada is being withdrawn. The NOI for the EIS was announced on November 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** For the Federal Highway Administration: Mr. Abdelmoez Abdalla, Environmental Program Manager, Federal Highway Administration, 705 N. Plaza, Suite 220,

Carson City, NV 89701, Telephone: 775-687-1231, email:

[Abdelmoez.Abdalla@fhwa.dot.gov](mailto:Abdelmoez.Abdalla@fhwa.dot.gov). For the Nevada Department of Transportation: Mr. Steve Cooke, Chief, Environmental Services, Nevada Department of Transportation, 1263 South Stewart Street, Carson City, NV 89712, Telephone: 775-888-7686, email: [scooke@dot.state.nv.us](mailto:scooke@dot.state.nv.us).

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Nevada Department of Transportation, the Regional Transportation of Southern Nevada, and the City of Las Vegas (City) will not pursue the development of an EIS for the Sheep Mountain Parkway. The purpose of the proposed project was to accommodate travel demands resulting from existing and planned development in the northern Las Vegas Valley by considering multimodal transportation facilities. Based on a number of external issues affecting the completion of the Sheep Mountain Parkway EIS, the City has decided not to pursue the project as originally envisioned at this time. The City plans to pursue only the western portion of Sheep Mountain Parkway extending from Fort Apache Road to Clark County 215 (CC-215). The City will initiate the National Environmental Policy Act (NEPA) activities with the Bureau of Land Management as the Lead Agency to secure the additionally needed right-of-way.

Issued on August 21, 2012.

**Susan Klekar,**

*Division Administrator, Carson City, Nevada.*

[FR Doc. 2012-21190 Filed 8-27-12; 8:45 am]

**BILLING CODE 4910-22-P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Notice of Final Federal Agency Actions on Proposed Highway in Utah**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal Agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, State Route 18 (Bluff Street); from St. George Boulevard to Red Hills Parkway, in Washington County in the State of Utah. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the FHWA and other Federal agency actions on the highway project will be barred unless the claim is filed on or before February 24, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Mr. David Cox, Design Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84129; telephone (801) 955-3516; email: [David.Cox@dot.gov](mailto:David.Cox@dot.gov). The FHWA Utah Division's normal business hours are Monday through Friday, 7:30 a.m. to 4:30 p.m. MST. For UDOT: Mr. Brandon Weston, Environmental Services Director, 4501 South 2700 West, Salt Lake City, Utah 84114; telephone: (801) 965-4603; email: [brandonweston@utah.gov](mailto:brandonweston@utah.gov). The UDOT's normal business hours are Monday through Friday, 8 a.m. to 5:00 p.m. MST.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Utah: Bluff Street; St. George Boulevard to Red Hills Parkway in the city of St. George, Washington County, Utah. The project will include widening of Bluff Street to seven lanes from St. George Boulevard to 500 North; continuous shoulder, sidewalk, and curb and gutter from St. George Boulevard to Red Hills Parkway; a median U-turn intersection at St. George Boulevard; and a jug-handle underpass intersection at Sunset Boulevard. The project will accommodate future (2040) travel demand on Bluff Street mainline and at the St. George Boulevard and Sunset Boulevard intersections. The actions by the FHWA and other Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on January 25, 2012, in the FHWA Finding of No Significant Impact (FONSI) issued on July 24, 2012, and in other documents in the FHWA project files. The EA, FONSI, and other project records are available by contacting the FHWA or the UDOT at the addresses provided above. The FHWA EA and FONSI can be viewed and downloaded from the project Web site at [www.udot.utah.gov/bluffstreetstudy](http://www.udot.utah.gov/bluffstreetstudy).

This notice applies to all FHWA and other Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401-7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703-712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 420L-42091].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251-1377 (Section 404, Section 401, Section 319)]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)-300(j)(6)]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA-21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001-4129].

*Executive Orders:* E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13112, Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: August 21, 2012.

**James C. Christian,**

*Division Administrator, Salt Lake City.*

[FR Doc. 2012-21191 Filed 8-27-12; 8:45 am]

**BILLING CODE 4910-RY-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0031]

#### Agency Information Collection Activities; Revision of Currently-Approved Information Collection Request: Annual Report of Class I and Class II Motor Carriers of Property

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. FMCSA requests approval to revise an ICR entitled, "Annual Report of Class I and Class II Motor Carriers of Property (formerly OMB 2139-0004)," which is used to ensure that motor carriers comply with FMCSA's financial and operating statistics requirements at chapter III of title 49 CFR part 369 entitled, "*Reports of Motor Carriers.*" The agency invites public comment on this ICR. On April 20, 2012, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. One comment was received in responses to the above notice from the National Motor Freight Traffic Association, Inc., (NMFTA) in support of continuing this ICR. FMCSA concurs with this comment.

**DATES:** Please send your comments by September 27, 2012. OMB must receive your comments by this date in order to act quickly on the ICR.

**ADDRESSES:** All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2012-0031. 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 the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ms. Vivian Oliver, Transportation Specialist, Office of Information Technology, Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202-366-2974; email Address: *vivian.oliver@dot.gov*. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Report of Class I and Class II Motor Carriers of Property (formerly OMB 2139-0004).

*OMB Control Number:* 2126-0032.

*Type of Request:* Revision of a currently-approved information collection.

*Respondents:* Class I and Class II Motor Carriers of Property.

*Estimated Number of Respondents:* 197 (per year).

*Estimated Time per Response:* 9 hours.

*Expiration Date:* September 30, 2012.

*Frequency of Response:* Annually.

*Estimated Total Annual Burden:* 1,773 hours [197 respondents x 9 hours to complete form = 1,773].

**Background**

The Annual Report of Class I and Class II Motor Carriers of Property (Form M) is a mandated reporting requirement for all for-hire motor carriers (See 49 U.S.C. 14123; and implementing FMCSA regulations at 49 CFR part 369). Motor carriers (including interstate and intrastate) subject to the Federal Motor Carrier Safety Regulations are classified on the basis of their gross carrier operating revenues.<sup>1</sup>

Under the Financial and Operating Statistics (F&OS) program, FMCSA collects from Class I and Class II property carriers balance sheet and income statement data along with information on safety needs, tonnage, mileage, employees, transportation equipment, and other related data. FMCSA may also ask carriers to respond to surveys concerning their operations. The data and information collected

<sup>1</sup> For purposes of the Financial and Operating Statistics (F&OS) program, carriers are classified into the following three groups: (1) Class I carriers are those having annual carrier operating revenues (including interstate and intrastate) of \$10 million or more after applying the revenue deflator formula as set forth in Note A of 49 CFR 369.2; (2) Class II carriers are those having annual carrier operating revenues (including interstate and intrastate) of at least \$3 million, but less than \$10 million after applying the revenue deflator formula as set forth in 49 CFR 369.2; and (3) Class III carriers are those having annual carrier operating revenues (including interstate and intrastate) of less than \$3 million after applying the revenue deflator formula as set forth in Note A of 49 CFR 369.2.

would be made publicly available and used by FMCSA to determine a motor carrier's compliance with the F&OS program requirements prescribed at chapter III of title of 49 CFR part 369.

The regulations were formerly administered by the Interstate Commerce Commission and later transferred to the Secretary on January 1, 1996, by section 103 of the ICC Termination Act of 1995 (Pub. L. 104-88, 109 Stat. 803 (Dec. 29, 1995)), now codified at 49 U.S.C. 14123. On September 30, 1998, the Secretary delegated and transferred the authority to administer the F&OS program to the former Bureau of Transportation Statistics (BTS), now part of the Research and Innovative Technology Administration (RITA), to former chapter XI, subchapter B of 49 CFR part 1420 (63 FR 52192).

On September 29, 2004, the Secretary transferred the responsibility for the F&OS program from BTS to FMCSA in the belief that the program was more aligned with FMCSA's mission and its other motor carrier responsibilities (69 FR 51009). On August 10, 2006, the Secretary published a final rule (71 FR 45740) that transferred and redesignated certain motor carrier financial and statistical reporting regulations of BTS, that were formerly located at chapter XI, subchapter B of title 49 CFR part 1420, to FMCSA under chapter III of title 49 CFR part 369.

**Public Comments Invited**

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: August 13, 2012.

**Kelly Leone,**

*Associate Administrator for Office of Research and Information Technology.*

[FR Doc. 2012-20756 Filed 8-27-12; 8:45 am]

**BILLING CODE 4910-EX-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-2004-18898]

**Agency Response to Public Comments of Safety Measurement System Changes**

**AGENCY:** Federal Motor Carrier Safety Administration, DOT.

**ACTION:** Notice; response to comments.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) announces changes to the Carrier Safety Measurement System (SMS). A preview of the original improvements became available to motor carriers and law enforcement on March 27, 2012, and will remain available until the SMS changes become operational. The SMS improvements are now scheduled to be operational in December 2012.

Comments to the preview were reviewed and considered. This notice explains the Agency's modifications to the changes announced in March and describes four additional changes that will be implemented in December.

**DATES:** These improvements are scheduled to be operational in December 2012.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2004-18898 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility, (M-30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12-140, Washington, DC 20590-0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, 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" heading under the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments and additional information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Price, Federal Motor Carrier Safety Administration, 1000 Liberty Avenue, Suite 1300, Pittsburgh, PA 15222, Telephone 412-395-4816, E-Mail: *bryan.price@dot.gov*. 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**

Comments regarding the improvements outlined in this Notice were originally collected under Docket Identification Number FMCSA–2012–0074. To avoid confusion and ensure consistency, FMCSA is moving to a single CSA docket. FMCSA's CSA docket (FMCSA–2004–18898) will remain open to accept comments on the SMS methodology, and will remain open when the improvements outlined in this notice become operational in December.

*Submitting Comments*

If you submit a comment, please include docket number FMCSA–2004–18898. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to <http://www.regulations.gov>, enter "FMCSA–2004–18898" in the "Search" box, and click "Search". 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.

FMCSA will consider all comments and material received and may undertake future modifications of SMS 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> and in the "Search" box, enter "FMCSA–2004–18898", and click "Search". A list of documents will appear; click on the hyperlinks to view public submissions and Agency-provided materials. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*Privacy Act*

All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. Anyone is able to search the electronic forum for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**Background**

FMCSA's enforcement and compliance programs are making America's roads safer. CSA is FMCSA's new enforcement and compliance program and has been operational since December 2010. An overview of CSA is available in the March 27, 2012, **Federal Register** Notice (77 FR 18298). With rollout of CSA, commercial motor vehicle safety awareness is at an all-time high with 30,000,000 visits to the Agency's SMS Web site in its first year of operation. FMCSA has leveraged its programs to communicate with the industry about safety and compliance, resulting in the most dramatic drop in safety violations in a decade. In 2011, violations per roadside inspection were down by 8%, and driver violations per inspection were down by 10%.

SMS uses all available inspection and crash data to prioritize carriers for interventions. SMS quantifies on-road safety performance of carriers to identify the specific safety problems the carrier exhibits and to monitor whether performance is improving or worsening. SMS helps FMCSA more efficiently apply its resources and to bring carriers and drivers into compliance with Federal safety regulations and prevent crashes, saving lives.

The Agency has found that SMS is an effective tool for identifying those carriers with future safety and compliance issues. For example, the SMS has sufficient data to assess 200,000 of the 525,000 active carriers in FMCSA's data systems in a BASIC. Those 200,000 carriers are involved in 92% of the crashes reported to FMCSA. Both FMCSA and an independent evaluator, the University of Michigan Transportation Research Institute (<http://csa.fmcsa.dot.gov/Documents/Evaluation-of-the-CSA-Op-Model-Test.pdf>), have confirmed that SMS is an effective tool in identifying the high

risk motor carriers and a significant improvement over the previous SafeStat system.

FMCSA's CSA Web site (<http://csa.fmcsa.dot.gov>) is a resource that was created for all stakeholders to gain a better understanding of CSA in general, including SMS. This Web site offers many educational items including:

- Informational factsheets on various aspects of CSA, including SMS;
- Presentations used to deliver information to the industry regarding CSA in general and the SMS methodology;
- The operational version of the SMS Methodology along with the proposed version released in March 2012;
- Various studies conducted on SMS's effectiveness; among other educational resources.

The original FR Notice posted in March 2012 also includes detailed information about SMS.

FMCSA is continuously listening to stakeholder feedback and researching and analyzing ways to improve its programs. The SMS changes proposed in March reflect that work. FMCSA is committed to a thoughtful, methodical, and transparent process to ensure that the SMS continues to support the Agency's critical safety mission.

In total, the SMS changes being implemented in December more effectively identify and prioritize motor carriers for intervention to reduce commercial motor vehicle crashes and HM incidents. Motor carriers identified as exceeding the intervention threshold in any BASIC under the revised methodology have a 3.9% greater future crash rate and 3.6% greater future HM violation rate than those previously identified for intervention using the existing SMS methodology. Details regarding this analysis of motor carriers exceeding the intervention thresholds as well as high risk motor carrier identification is posted on the CSA Web site at ([http://csa.fmcsa.dot.gov/Documents/SMS\\_FoundationalDoc\\_Final.pdf](http://csa.fmcsa.dot.gov/Documents/SMS_FoundationalDoc_Final.pdf))

**Proposed SMS Changes From March 2012 Federal Register Notice**

FMCSA provided detailed descriptions of the following planned changes to the SMS in a **Federal Register** Notice published on March 27, 2012 (77 FR 18298) and in a summary and analysis document posted on the CSA Web site ([http://csa.fmcsa.dot.gov/Documents/SMS\\_FoundationalDoc\\_Final.pdf](http://csa.fmcsa.dot.gov/Documents/SMS_FoundationalDoc_Final.pdf)); these changes have been available for carriers and law enforcement to preview since that date and included the following:

- Strengthening the Vehicle Maintenance BASIC by incorporating cargo/load securement violations from today's Cargo-Related BASIC;
  - Changing the Cargo-Related BASIC to the Hazardous Materials (HM) BASIC to better identify HM-related safety and compliance problems;
  - Better aligning the SMS with Intermodal Equipment Provider (IEP) regulations;
  - Aligning violations that are included in the SMS with Commercial Vehicle Safety Alliance (CVSA) inspection levels by eliminating vehicle violations derived from driver-only inspections and driver violations from vehicle-only inspections;
  - More accurately identifying carriers that transport significant quantities of HM; and
  - More accurately identifying carriers involved in transporting passengers.
- In addition, FMCSA described changes to the display of information on the SMS Web site (<http://ai.fmcsa.dot.gov/sms/>). Specifically, FMCSA provided notice of its plan to modify the SMS Web site display to:
- Change current terminology, including the terms "Insufficient Data" and "Inconclusive," to fact-based definitions that clarify the carrier's status in each BASIC; and
  - Distinguish between crashes with injuries and crashes with fatalities.

**SMS Changes To Be Implemented**

FMCSA is implementing the above-mentioned changes to SMS in December 2012, with two notable modifications. First, in response to public comments expressing concern about the HM BASIC, it will not be made available to the public for one year. Instead, only motor carriers and law enforcement personnel that log into FMCSA systems will be able to view percentile ranks in the HM BASIC. This one year time period will allow the Agency to further study and refine the BASIC prior to making it available to the public. Second, the HM BASIC will be named the HM Compliance BASIC.

**Additional Changes**

In addition to the changes outlined above, FMCSA is providing notice of four more changes based on careful consideration of comments received and stakeholder feedback. In short, the Agency is proposing these changes: to remove speeding violations that are 1 to 5 miles per hour (mph) over the speed limit; to lower the severity weight from 5 to 1 for speeding violations that do not designate MPH range above the speed limit; to make the severity weights associated with electronic and paper

logbook violations the same; and to change the name of the Fatigued Driving (Hours-of-Service (HOS)) BASIC to the Hours-of-Service (HOS) Compliance BASIC. Comments to these additional changes can be made to the original CSA docket (FMCSA-2004-18898). Users of the SMS Preview Web site should be aware the four additional changes will not be incorporated in the SMS Preview Web site and will become visible upon going operational in December.

*Removal of 1 to 5 MPH Speeding Violations*

In the current SMS, the Unsafe Driving BASIC uses all speeding violations regardless of the range exceeding the speed limit. FMCSA is removing commercial motor vehicle speeding violations in the 1 to 5 mph over the speed limit range from SMS. Current speedometer regulations (49 CFR 393.82) only require accuracy within 5 mph. This change therefore aligns SMS with the regulatory requirement. Once implemented, the Unsafe Driving BASIC will not include any speeding violations that fall into the 1 to 5 mph over the speed limit range regardless of when the inspection occurred. This change applies to the prior 24 months of data used by SMS and all SMS data moving forward.

*Lowered Severity Weight for Speeding Violations That Do Not Designate MPH Range Above the Speed Limit*

In the current SMS, the Unsafe Driving BASIC applies a severity weight of 5 to general speeding violations that do not specify the range exceeding the speed limit. FMCSA is reducing the severity weight for general speeding violations (49 CFR 392.2S) to 1 for those violations occurring on or after January 1, 2011. This is the date when inspectors had access to updated roadside inspection software, ASPEN, to record violations broken out by mile per hour categories above the speed limit. After the changes are implemented in December, the following severity weights will apply to recorded speeding violations:

Specified MPH range above speed limit	Violation severity weight
Not specified .....	1.* For all recorded violations with an unspecified range above the speed limit occurring after January 1, 2011.
1-5 .....	0
6-10 .....	4
11-14 .....	7

Specified MPH range above speed limit	Violation severity weight
15+ .....	10

*Alignment of Paper and Electronic Logbook Violations*

In the current SMS, hours-of-service form and manner violations have different weights for paper (weight of 2) and electronic form and manner logbook (weight of 1) violations. FMCSA is now equally weighting paper and electronic logbook form and manner violations with a severity weight of 1 for consistency purposes. In addition, the current SMS assigns a severity weight of 5 to paper log violations having to do with a driver not having a log book but only a severity weight of 1 for similar violations of electronic logbooks. With these changes, all violations related to not having a logbook, electronic or paper, will have a severity weight of 5.

*Name Change of the Fatigued Driving (HOS) BASIC to the HOS Compliance BASIC*

Upon careful review of comments concerning the proposed SMS changes and stakeholder feedback, FMCSA is changing the name of the Fatigued Driving (HOS) BASIC to the Hours of Service (HOS) Compliance BASIC. This action is being taken to reflect that the BASIC includes violations such as "form and manner" and "logbook not current" that, by themselves, do not necessarily indicate fatigued driving or driving in excess of allowable hours.

**Response to Docket Comments on "Improvements to the Compliance, Safety, Accountability (CSA) Motor Carrier Safety Measurement System (SMS)"**

The Agency received 118 unique comment submissions to the March notice, mostly from drivers, carriers, and industry associations. Of the 118 submissions, no single topic drew responses from a majority of the commenters and many of the submissions addressed more than one topic. Below is a synopsis of the comments received and the Agency's responses.

*Strengthen the Vehicle Maintenance BASIC by moving cargo/load securement violations from the Cargo-Related BASIC to the Vehicle Maintenance BASIC*

*Comments:* Several commenters, such as Bison Transport, Inc, Q-Line Trucking, the Western Trucking Alliance, Vigillo, LLC, the Owner-Operator Independent Driver

Association (OOIDA), and B-H Transfer commented that cargo/load securement violations do not belong in the Vehicle Maintenance BASIC. Some of those commenters, such as Bison Transport, proposed that the Unsafe Driving BASIC would be more suitable, because the driver bears primary responsibility for such violations. Some commenters, such as Vigillo, are concerned that cargo/load securement violations would not receive enough emphasis in the Vehicle Maintenance BASIC. Some commenters are of the opinion that cargo/load securement violations will still receive too much emphasis. Others, like Q-Line Trucking, are concerned that moving the violations to the Vehicle Maintenance BASIC would transfer the flat-bed bias to that BASIC instead of addressing the bias directly.

Several commenters, including OOIDA, Bison Transport, Inc. and Q-Line Trucking, proposed that cargo/load securement violations should be compared by group—flatbed or open trailer—not all together in the Vehicle Maintenance BASIC.

The American Trucking Association (ATA) supports the proposed enhancement but suggested changing the name of the Vehicle Maintenance BASIC to reflect the additional violations being included.

*Agency Response:* FMCSA analysis indicates the proposed approach of moving cargo/load securement violations into the Vehicle Maintenance BASIC identifies carriers with a higher future crash risk while at the same time effectively addressing the bias associated with carriers that haul open trailers. A detailed description of this analysis, and the issue associated with motor carriers that primarily transport open trailers, is posted on the CSA Web site at [http://csa.fmcsa.dot.gov/Documents/SMS\\_FoundationalDoc\\_Final.pdf](http://csa.fmcsa.dot.gov/Documents/SMS_FoundationalDoc_Final.pdf).

By moving load securement violations to the Vehicle Maintenance BASIC and recalibrating the severity weights, FMCSA has mitigated the known bias created by information system limitations; ensured that the carriers with a pattern of load securement violations are still identified; and strengthened the Vehicle Maintenance BASIC by improving the identification of carriers with the highest future crash rates.

In addition, the FMCSA has determined that the Unsafe Driving BASIC is not an appropriate place to house the cargo securement violations. The Vehicle Maintenance BASIC is focused on the physical condition of the vehicle, of which the cargo is a part, whereas the Unsafe Driving BASIC is

focused on how the vehicle is being driven (e.g. improper lane change, speeding). Further, the Vehicle Maintenance BASIC is normalized by number of inspections, whereas the Unsafe Driving BASIC is normalized by on-road exposure measured by Power Units (PU) and Vehicle Miles Traveled (VMT). The Agency continues to believe that the number of inspections is a more appropriate normalization factor for cargo securement violations, and, therefore, will include the cargo securement violations in the Vehicle Maintenance BASIC. The Agency does not plan to change the name of the Vehicle Maintenance BASIC with this set of enhancements.

FMCSA acknowledges there would be advantages to comparing cargo/load securement violations by group, e.g. flatbed or open trailer. However, at this time FMCSA does not have access to reliable, consistent data to allow us to make these determinations.

#### *Rename the Cargo-Related BASIC the HM Compliance BASIC*

*Comments:* Many commenters believe the HM Compliance BASIC should not be implemented as described. Commenters, such as Schneider National, expressed that HM violations are paperwork violations that do not correlate with crash risk or severity. Commenters such as Vigillo feel that carriers hauling HM infrequently would be disproportionately affected by the existence of an HM Compliance BASIC, regardless of their overall safety. Some commenters, including Con-way Freight, suggested separating out different types of HM operations or adjusting severity weights for HM violations by bulk versus non-bulk. Schneider National's comments suggest removing shipper violations from SMS.

*Agency Response:* The Agency strongly disagrees with the assertion that HM regulations are solely paperwork violations. The basis for the HM Regulations is twofold—to contain HM for the protection of life and property, and to communicate the inherent risks of hazardous materials to emergency responders when released. While violations of shipping papers and placards do not cause crashes, the absence of them during mitigation of a crash where HM is present can result in injury or death to emergency responders and the public. FMCSA has the mandate to enforce the HM Regulations as they pertain to transportation by highway, and the HM Compliance BASIC provides the Agency with the tools needed to identify trends in non-compliance.

The first step in the development of the HM Compliance BASIC was an examination of carrier and shipper violations to make a determination of which violations should be accountable to the carrier. The Agency, including subject matter experts, determined that the violations outlined in Appendix A of the SMS Methodology are to be included in the HM Compliance BASIC [http://csa.fmcsa.dot.gov/Documents/SMS\\_Methodology\\_Carrier\\_V3-0.pdf](http://csa.fmcsa.dot.gov/Documents/SMS_Methodology_Carrier_V3-0.pdf). However, based on feedback received during the preview period, three of the violations listed in Appendix A of the preview methodology will not be included when HM BASIC goes operational in December on the basis that they are administrative, rather than safety based. The three violations that will not be included are: 49 CFR 107.601 Failing to register with PHMSA prior to transporting hazardous materials requiring HM registration; 49 CFR 107.620(b) No copy of US DOT Hazardous Materials Registration Number; and 49 CFR 397.3AU Failing to comply with Alliance for Uniform HM Registration requirements.

The intervention threshold in this BASIC will be set at 80% for all carriers. Analysis done on the effectiveness of this BASIC shows that carriers above the intervention threshold have future HM violation rates more than 15% higher than carriers above the threshold in the current Cargo-Securement BASIC.

However, in consideration of the comments related to the HM Compliance BASIC FMCSA will refrain from displaying this BASIC to the public until December 2013. During this time, the HM Compliance BASIC will be utilized as an enforcement prioritization tool, and its effectiveness in identifying non-compliant HM carriers will be further analyzed.

The Agency recognizes that different carriers haul various quantities of HM. Therefore, the Agency plans to display the percentage of HM placardable inspections for a carrier to provide context to inspections and violations displayed on SMS.

Analysis conducted on the HM Compliance BASIC indicates that the motor carriers over the 80th percentile intervention threshold in this BASIC had slightly fewer inspections where a placardable quantity of HM was on board, but more HM inspections with violations, which means it better identifies the carriers in non-compliance. A detailed description of this analysis is also available on the CSA Web site at [http://csa.fmcsa.dot.gov/Documents/SMS\\_FoundationalDoc\\_Final.pdf](http://csa.fmcsa.dot.gov/Documents/SMS_FoundationalDoc_Final.pdf).

By implementing the HM Compliance BASIC for enforcement purposes, carriers that are not in compliance by properly packaging, transporting, accurately identifying, and communicating hazardous cargo in the event of a crash or spill are being identified.

Each BASIC measures a different area of performance and compliance. Substantial compliance and good performance in the other BASICs does not necessarily translate into proper safety management practices and compliance with the HM Regulations. Therefore, it is possible for a carrier to have strong safety management practices in all other BASICs, while demonstrating poor performance in the HM Compliance BASIC. However, FMCSA analysis indicates that nearly half of the motor carriers above the 80th percentile intervention threshold in the HM BASIC are also above threshold in at least one other BASIC.

#### *Better Align SMS With IEP Regulations*

*Comments:* Many of the commenters that addressed this change, such as Western Trucking Alliance, OOIDA, and Werner Enterprises, support implementation. However, some commenters, including ATA, are concerned that attributing violations to a motor carrier that should be found during a pre-trip inspection, is not effective in holding IEPs accountable for maintaining their trailers with continuous maintenance programs.

*Agency Response:* In December 2008, FMCSA adopted regulations to require IEPs to: register and file with FMCSA an IEP Identification Report (Form MCS-150C); establish a systematic inspection, repair, and maintenance program to assure the safe operating condition of each intermodal chassis; maintain documentation of their maintenance program; and provide a means to effectively respond to driver and motor carrier reports about intermodal chassis mechanical defects and deficiencies (73 FR 76794 and amended with 74 FR 68703). Roadability reviews are conducted to ensure compliance with this rule. Although FMCSA will not assign a safety rating to an IEP as a result of a roadability review, it will cite the IEP for violations found and may impose civil penalties.

Under 49 CFR Part 390.40, when a motor carrier's driver agrees to haul equipment from an IEP, the driver is required to determine if the IEP trailer is in safe condition. With this change implemented, those violations that should be found during pre-trip inspections will be included in a motor

carrier's SMS in order to better identify carriers with compliance issues.

IEPs are not included in the SMS because they have different operations than a motor carrier, and it would not be accurate to compare them to motor carrier operations in SMS. FMCSA may consider a measurement system for IEPs in the future. Therefore, violation data collected during inspections performed today, may eventually be used in a measurement system for IEPs.

#### *Align Violations That Are Included in SMS With the CVSA Inspection Levels by Eliminating the Vehicle Violations Derived From Driver-Only Inspections and Driver Violations From Vehicle-Only Inspections*

*Comments:* Many commenters, such as ATA and FedEx, agreed with this change. OOIDA asked that a list of violations associated with specific inspection levels be made public. A few commenters from the safety advocacy community, including Advocates for Highway and Auto Safety, strongly opposed removing any identified violations from a carrier's record.

*Agency Response:* In the current SMS, a BASIC measure is calculated by dividing the number of applicable violations by the number of relevant inspections. A relevant inspection is one where either (a) a relevant violation was found, or (b) the inspection level requires an examination of areas that could reveal a violation in the BASIC. Without the change, vehicle violations found from driver-only inspections would be counted in the Vehicle Maintenance BASIC, without giving credit in that BASIC for clean driver-only inspections. By aligning the violations used in SMS calculations with CVSA inspection levels, carriers will be measured using only violations that are included in appropriate inspections without being penalized for violations cited outside the scope of the inspection. This change reinforces that inspectors should report violations within the scope of the level of inspections they are certified to perform. It is also important to note that though these violations will not be included in the SMS BASIC measure calculations, the violations will still appear on the inspection report, and, therefore, will still be on the carrier's profile.

A description of what is examined for each inspection level is described on the FMCSA Web site: <http://www.fmcsa.dot.gov/safety-security/safety-initiatives/mcsap/insplevels.htm>.

- Any violation may be cited on a level 1, 2, 4 or 6 inspection

- Level 3 (driver-only) inspections only include driver violations, which are those violations that are included in the Unsafe Driving, Fatigued Driving (HOS) (being renamed HOS Compliance), and Driver Fitness BASICs

- Level 5 (vehicle-only) inspections only include the violations associated with Vehicle Maintenance, current Cargo-Related (changing to HM Compliance) BASICs

These violations, by BASIC, can be found in the Version 3.0 SMS Methodology document, Appendix A [https://csa.fmcsa.dot.gov/Documents/SMS\\_Methodology\\_Carrier\\_V3-0.pdf/](https://csa.fmcsa.dot.gov/Documents/SMS_Methodology_Carrier_V3-0.pdf/).

#### *More Accurately Identify Carriers That Transport Significant Quantities of HM*

*Comments:* Schneider National and FedEx wanted the Agency to implement either the HM Compliance BASIC or the HM threshold, but not both. In one of its comments, Con-Way suggested that the HM Intervention threshold should apply to HM Safety Permit carriers only.

*Agency Response:* The HM Compliance BASIC and the HM Intervention threshold are two separate concepts and cannot be used as a substitute for each other. The HM Compliance BASIC allows the Agency to better identify HM-related compliance issues in order to mitigate the consequences of crashes or spills involving HM. The HM Intervention threshold applies more stringent intervention thresholds across all BASICs for carriers that often haul placardable quantities of HM due to the increased potential consequences of a crash involving placardable quantities of HM.

The definition of carriers subject to the lower HM Intervention threshold is being revised in December to ensure the carriers are hauling a sizeable amount of HM placardable quantities before being subject to the more stringent intervention thresholds. Under the new criteria, a motor carrier will be subject to the lower HM intervention thresholds when they have:

1. At least two inspections on a vehicle transporting HM requiring placards, within the past 24 months, with one inspection occurring within the past 12 months; and
2. At least five percent of the motor carrier's total inspections involve a vehicle transporting HM requiring placards; OR
3. An FMCSA HM safety permit.

FMCSA had originally proposed to also subject carriers to the lower HM intervention thresholds if an investigation within the last 24 months had identified them as a carrier that transported placarded quantities.

However, that provision is not being implemented because commenters, including Werner Enterprises pointed out that motor carriers that transport as little as one placarded load per year could be subject to the lower HM intervention thresholds primarily because they received a compliance review rather than the fact that they transport significant quantities of HM.

*More Accurately Identify Carriers Involved in Transporting Passengers*

*Comments:* No commenters objected to this change. However, Advocates for Highway and Auto Safety requested that the analysis behind the change be made public.

*Agency Response:* The Agency is proceeding with the definition change to the population of carriers subject to the more stringent Passenger Carrier intervention thresholds across BASICs. FMCSA proposed this change based on a desire to accurately capture passenger carriers subject to our jurisdiction as opposed to specific statistical analysis. This change adds all for-hire carriers with 9–15 passenger capacity vehicles and private carriers with 16-plus passenger capacity vehicles, as these carriers/entities are under FMCSA's authority, removes all carriers with only 1–8 capacity vehicles and private carriers with 1–15 passenger capacity vehicles (effectively removing many limousines, vans, taxis, etc.), as these carriers/entities are generally outside most of FMCSA's authority, and removes carriers where less than 2% of their respective fleets are passenger vehicles to exclude carriers that do not transport passengers as a significant part of their businesses. This change removes 4,200 carriers and adds 5,700 other carriers for a net increase of 1,500 carriers that are identified as transporting passengers.

*Change the Current Terminology, "Inconclusive" and "Insufficient Data," to Fact-Based Descriptions*

*Comments:* No commenters objected to this change. The Advocates for Highway and Auto Safety wanted the specific replacement language available to the public during the preview instead of the general term "fact-based descriptions." ATA stated that the descriptions are a positive step, but would like BASIC percentile ranks (i.e. 0%) assigned to carriers that have not had a violation in a certain number/percentage of inspections to indicate their safe operations in addition to the fact-based descriptions.

*Agency Response:* In the current SMS, having a 0% in a BASIC indicates that the carrier has sufficient information for

a percentile in SMS and that the carrier is operating safer than 100% of others in its safety event group. When the December 2012 SMS changes are implemented, carriers with sufficient data to be assessed and no violations will be assigned a 0% in that BASIC. The fact-based descriptions will apply when a carrier does not receive a percentile based on the methodology.

*Separate Crashes With injuries and Crashes With Fatalities in the SMS Display.*

*Comments:* The majority of commenters, including ATA, FedEx, OOIDA, do not want crashes displayed on the SMS Web site, unless a preventability determination process is implemented. Those commenters also do not want carriers to be prioritized using the Crash Indicator until a preventability determination process is implemented. Two commenters, the Advocates for Highway and Auto Safety and a joint comment from the Truck Safety Coalition, Parents Against Tired Truckers, Citizens for Reliable and Safe Highways and Road Safe America, support the proposed change and as well as the use of the Crash Indicator for prioritization of carriers and cite research indicating crash involvement is a good predictor of future crashes. In addition, these safety advocates want the Crash Indicator to be available for the public to view and do not want the Agency to remove any crashes from a carrier's record.

*Agency Response:* Consistent with the public display of crash information over the last 10 years on our Safer Web site and in the SafeStat system, carrier crashes reported to MCMIS are displayed in FMCSA public information technology (IT) systems. Carrier Crash Indicator percentiles and measures are not publicly available. In June 2012, language was added to various FMCSA public IT systems, including SMS, and it explicitly explains that the list of crashes represents a motor carrier's involvement in a crash with no determination as to responsibility.

FMCSA analysis indicates that prior crashes, regardless of a carrier's role in a crash, are a good predictor of future crash involvement. Therefore, FMCSA continues to use the Crash Indicator for internal prioritization purposes, while continuing to hide the percentile from public view. However, FMCSA recognizes that additional crash data might further sharpen the ability of the SMS to identify carriers that pose the highest risk. Accordingly, on July 23, 2012, the Agency announced it is conducting a comprehensive analysis to identify a process for determining a

carrier's role in a crash and including that determination in the SMS. More information on this issue is available at [http://csa.fmcsa.dot.gov/documents/CrashWeightingResearchPlan\\_7-2012.pdf](http://csa.fmcsa.dot.gov/documents/CrashWeightingResearchPlan_7-2012.pdf).General.

*Comments on SMS Preview*

Some commenters, including ATA and Schneider National, agree with providing a preview for carriers to understand how proposed changes will affect their SMS percentiles and to address any safety issues that may be identified before the changes go public. OOIDA and the Alliance for Safe, Efficient, and Competitive Truck Transportation (ASECTT) believe that the creation of and any changes to SMS need to go through a notice and comment rulemaking under 49 U.S.C. 31144(b).

*Agency Response:* FMCSA uses SMS to examine roadside and other inspection data to identify current safety performance issues and intervene with carriers when necessary. SMS does not change any regulation within the FMCSRs, is not a safety fitness rating, does not affect the safety fitness rating of a motor carrier, and does not impact a carrier's operating authority. Accordingly, the Agency's current use of SMS data is not subject to notice and comment rulemaking.

The Agency is, however, developing a notice of proposed rulemaking (NPRM) that would propose the use of SMS data in making safety fitness determinations. The NPRM will solicit comments on this particular issue.

In order to ensure transparency in the development and enhancements of SMS, the Agency plans to issue changes at periodic intervals and to provide enforcement personnel and carriers the opportunity to preview the changes prior to implementation. FMCSA will continue to seek comments and consider them before completing implementation of changes.

*Comments on Other Topics and Agency Responses*

FMCSA received many comments about aspects of the CSA program that did not concern the proposed changes to SMS and are therefore beyond the scope of this notice. These topics include, among other things, the general status of CSA, the correlation between BASIC scores and future crash risk, a perception of effects on small businesses, the Utilization Factor (UF) that gives carrier credit for the extra exposure that results from making high utilization of trucks, training of enforcement officers, violation weightings, the Driver SMS (DSMS),

severity weighting determinations, disparities between States, the DataQs process, and making SMS scores publicly available.

While these topics are beyond the scope of this notice, FMCSA intends to respond to these comments through the Frequently Asked Questions (FAQs) on FMCSA's Web site. FMCSA will provide also these topics to the MCSAC subcommittee that will provide the Agency recommendations on CSA for their consideration.

### Implementation

Changes outlined in this notice will be implemented in December 2012.

### Next Steps

As mentioned throughout this notice, FMCSA plans to periodically develop enhancements to SMS, make them available for preview to law enforcement and motor carriers, and collect comments. The next set of packaged enhancements is under development. The Agency is examining the following: comprehensive modifications to roadside violation severity weights, recalibration of the Utilization Factor used to incorporate VMT for the Crash Indicator and Unsafe Driving BASIC, and adjustments to safety event groups in all BASICs.

Issued: August 22, 2012.

**Anne S. Ferro,**  
Administrator.

[FR Doc. 2012-21196 Filed 8-24-12; 12:00 pm]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Unified Carrier Registration Plan Board of Directors Meeting.

**TIME AND DATE:** The meeting will be held on September 6, 2012, from 12:00 noon to 3:00 p.m., Eastern Standard Time.

**PLACE:** This meeting will be open to the public via conference call. Any interested person may call 1-877-820-7831, passcode, 908048 to listen and participate in this meeting.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing

the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Issued on: August 24, 2012.

**Larry W. Minor,**

Associate Administrator, Office of Policy,  
Federal Motor Carrier Safety Administration.

[FR Doc. 2012-21296 Filed 8-24-12; 4:15 pm]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2011-0054]

#### Title VI; Final Circular

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of final Circular.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its Web site, guidance in the form of a Circular to assist grantees in complying with Title VI of the Civil Rights Act of 1964. The purpose of this Circular is to provide recipients of FTA financial assistance with instructions and guidance necessary to carry out the U.S. Department of Transportation's Title VI regulations (49 CFR part 21).

**DATES:** *Effective Date:* The effective date of the Circular is October 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** For program questions, Amber Ontiveros, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E54-422, Washington, DC 20590, phone: (202) 366-4018, fax: (202) 366-3809, or email, [Amber.Ontiveros@dot.gov](mailto:Amber.Ontiveros@dot.gov). For legal questions, Bonnie Graves, Office of Chief Counsel, same address, room E56-306, phone: (202) 366-4011, or email, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Availability of Final Circular

This notice provides a summary of the final changes to the Title VI Circular and responses to comments. The final Circular itself is not included in this notice; instead, an electronic version may be found on FTA's Web site, at [www.fta.dot.gov](http://www.fta.dot.gov), and in the docket, at [www.regulations.gov](http://www.regulations.gov). Paper copies of the final Circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865.

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### I. Overview

FTA is updating its Title VI Circular, last revised in 2007, to clarify what recipients must do to comply with the U.S. Department of Transportation (DOT) Title VI regulations. This notice provides a summary of changes to FTA Circular 4702.1A, "Title VI and Title VI—Dependent Guidelines for FTA Recipients," addresses comments received in response to the September 29, 2011, **Federal Register** notice (76 FR 60593), and provides information regarding implementation of the final Circular. The final Circular, 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients" becomes effective on October 1, 2012, and supersedes FTA Circular 4702.1A.

FTA conducted extensive outreach related to the proposed circular. FTA sponsored Information Sessions in five cities around the country regarding the proposed revisions to the Title VI Circular and proposed a new Environmental Justice Circular (see docket FTA-2011-0055 for more information on the proposed and final Environmental Justice Circular). The meetings provided a forum for FTA staff to make presentations about the two proposed circulars and allowed attendees an opportunity to ask clarifying questions. In addition, FTA participated in various conferences occurring in October and November 2011, and hosted several webinars. FTA received approximately 117 written comments to the docket related to the proposed Title VI Circular from providers of public transportation, State Departments of Transportation, advocacy groups, individuals, metropolitan planning organizations, and transit industry groups. Some comments were submitted on behalf of multiple entities.

One important change to the revised Circular involves removal of several references to environmental justice (EJ) contained in FTA Title VI Circular 4702.1A. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," was signed by President Clinton on February 11, 1994. Subsequent to issuance of the Executive Order, DOT issued an internal Order for implementing the Executive Order, which DOT recently updated. The DOT Order (Order 5610.2(a), "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 77 FR 27534, May 10, 2012) describes the process the Department and its modal administrations (including FTA) will use to incorporate EJ principles into programs, policies and activities. The DOT Order does not provide guidance to FTA grantees on what is expected regarding integrating EJ principles into the public transportation decision-making process. FTA had not previously published separate and distinct EJ guidance for its grantees, but instead included EJ concepts in Title VI Circular 4702.1A.

Several instances of Title VI and EJ issues raised by FTA grantees led FTA to initiate a comprehensive management review of the agency's core guidance to grantees in these and other areas of civil rights responsibilities for public transportation. Based on that review, FTA determined a need to clarify and distinguish what grantees should do to comply with Title VI regulations; and, separately, what grantees should do to facilitate FTA's implementation of Executive Order 12898.

Given the above, FTA removed most references to environmental justice from the final Title VI Circular 4702.1B in order to clarify the statutory and regulatory requirements for compliance with Title VI. In addition to the revised Title VI Circular, FTA has also published, in the July 17, 2012, **Federal Register**, a notice of availability for a new final EJ Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients" (Docket number FTA-2011-0055) (77 FR 42077, July 17, 2012). The EJ Circular is available on FTA's Web site here: [http://www.fta.dot.gov/legislation\\_law/12349\\_14740.html](http://www.fta.dot.gov/legislation_law/12349_14740.html). The EJ Circular is designed to provide grantees with a distinct framework to assist them as they integrate principles of environmental justice into their public transportation decision-making processes, from planning through

project development, operation and maintenance. FTA expects the additional clarification provided by both Circulars will provide grantees the guidance and direction they need to properly incorporate both Title VI and environmental justice into their public transportation decision-making. FTA encourages interested parties to review both **Federal Register** notices and both circulars.

## II. Implementation

A number of commenters had questions about the timing of implementing the new circular, including which circular they should use if their Title VI Program is due within a short time of the effective date of the new circular, and whether Title VI Programs would have to be updated to comply with new requirements.

### A. Expiration Dates

Recipients with Title VI Programs due to expire prior to October 1, 2012 must submit their Programs to FTA prior to October 1, 2012, and the Programs shall be compliant with Circular 4702.1A. Recipients with Title VI Program expiration dates between October 1, 2012 and March 31, 2013 must submit a Title VI Program that is compliant with Circular 4702.1B by April 1, 2013. This grace period will allow recipients to update their system-wide standards and policies, as well as their major service change and disparate impact policies, as applicable, and have their board of directors or appropriate entity or official(s) responsible for policy decisions approve the Title VI Program prior to submission. On or about October 1, 2012, FTA will post information on our Title VI web page regarding which recipients are in this group, and we will also reach out to each recipient to ensure awareness of the requirement. In addition, FTA will adjust the expiration dates of all Title VI Programs in order to provide for an orderly, staggered submission of Title VI Programs. On or about October 1, 2012, FTA will publish information on our Web page related to future due dates and expiration dates of Title VI Programs.

### B. System-Wide Standards and Policies

The final Circular requires all fixed route transit providers to set system-wide standards and policies, and requires all transit providers that operate 50 or more fixed route vehicles in peak service and are located in an urbanized area of 200,000 or more in population to establish major service change and disparate impact policies. These standards and policies must be

approved by the board of directors or appropriate governing entity or official(s) responsible for policy decisions. As stated above, fixed route transit providers with Title VI Programs expiring between October 1, 2012, and March 31, 2013, will be provided a grace period in which to submit Title VI Programs that comply with the new Circular 4702.1B, and this will include updating or establishing these standards and policies. All other fixed route transit providers will be required to establish or update their standards and policies and submit them into TEAM by March 31, 2013. In addition, Title VI Programs due to expire on or after April 1, 2013 must comply with the reporting requirements of Circular 4702.1B and therefore will need to include their new or updated system-wide standards and policies in their next Title VI Program submission.

### C. Service Equity Analyses

Providers of public transportation that operate 50 or more fixed route vehicles in peak service and are located in an urbanized area of 200,000 or more in population are required to conduct service equity analyses for major service changes. Transit providers with major service changes scheduled between October 1, 2012 and March 31, 2013 may follow the service equity analysis guidance provided in FTA Circular 4702.1A. FTA acknowledges that major service changes are often planned many months in advance, and transit providers may have already begun to conduct equity analyses for upcoming changes. In addition, the new circular requires a public participation process and board of directors approval for defining major service changes and adopting a disparate impact policy, as well as board approval of the analysis; these processes will take time. A transit provider may conduct a service equity analysis consistent with the new Circular for major service changes occurring prior to April 1, 2013, but is not required to do so. All major service changes occurring on or after April 1, 2013 must be analyzed with the framework outlined in the new Circular, 4702.1B.

### D. Conducting Surveys

Providers of public transportation that operate 50 or more fixed route vehicles in peak service and are located in an urbanized area of 200,000 or more in population are required to collect and report demographic data through customer surveys at least once every five years (see chapter IV, section 5b). Transit providers that have not conducted passenger surveys in the last

five years will have until December 31, 2013, to conduct these surveys.

#### E. Training

FTA will conduct ongoing training through webinars and in-person presentations in order to ensure recipients and subrecipients understand the requirements of the new circular.

### Chapter-by-Chapter Analysis

#### A. General Comments

This section addresses comments that were not directed at specific chapters, but to the Circular as a whole.

A number of commenters made suggestions or recommendations that were outside the scope of the circular, for example, suggestions related to meeting obligations to affirmatively further fair housing, questions related to specific situations, and others. Some commenters asked about other protected classes, specifically the prohibition of discrimination on the basis of age, sex and disability. There are nondiscrimination statutes for all of those areas, but they are not part of Title VI. Title VI prohibits discrimination on the basis of race, color, and national origin only. All comments such as these are beyond the scope of this Circular and are not addressed here.

Commenters were generally supportive of FTA's proposal to develop separate Circulars for Title VI and environmental justice, and also supportive of the changes FTA proposed to FTA Title VI Circular 4702.1A. Some commenters were concerned about the volume of new material, with the addition of appendices to Title VI Circular 4702.1B, while others expressed concern about the costs of implementation. The appendices, while voluminous, are designed to make it easier for recipients to comply with Title VI requirements, as they demonstrate acceptable analyses and provide examples of what FTA expects. As noted in Chapter IV of the chapter-by-chapter analysis, we have addressed the cost concerns by amending the proposed threshold for the more comprehensive Title VI reporting requirements for transit providers, amending the survey requirement, and amending the number of transit amenities that must be monitored.

One important change made throughout the final Circular is that we have, where applicable, included the text of the DOT Title VI regulation that applies to the requirement. FTA Title VI Circular 4702.1A often cites the regulation, but does not quote or summarize the text. Commenters agreed it is an enhancement to include the text

or a summary of the regulation so they understand the nexus between the regulation and the requirements in the Circular.

Some commenters made suggestions about language choice, such as being careful about the usage of "should" and "shall" in order to distinguish between recommended and required actions. FTA has reviewed the final Circular and made revisions as appropriate. Some commenters suggested that FTA use the phrase "in a non-discriminatory manner" instead of the phrase "without regard to race, color, or national origin," as the second phrase, while consistent with the regulation, implies that if a recipient makes decisions without regard to race, color, or national origin, there may be a discriminatory effect. FTA has carefully reviewed the final Circular and determined that the use of these phrases depends on the context. We have made revisions where appropriate.

Several commenters stated that FTA should coordinate or collaborate with the Federal Highway Administration (FHWA) to ensure one set of requirements, especially for metropolitan planning organizations (MPOs) and State Departments of Transportation that receive funds from both agencies. FTA and FHWA are working to identify common reporting requirements so that States and MPOs need only submit information once that will satisfy FTA and FHWA requirements.

One commenter asserted that Federal agencies lack the authority to implement regulations prohibiting disparate impact, and that FTA should be reassessing the implementation of DOT's Title VI regulation. Specifically, the commenter pointed out that the U.S. Supreme Court in *Alexander v. Sandoval*, 532 U.S. 275 (2001), found no private right of action to allow private lawsuits based on evidence of disparate impact. However, as the U.S. Department of Justice advised Federal agencies in late 2001, "although *Sandoval* foreclosed private judicial enforcement of Title VI disparate impact regulations, it did not undermine the validity of those regulations or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations." (See, <http://www.justice.gov/crt/about/cor/coord/vimanual.php>). Therefore, the U.S. DOT's disparate impact regulations continue to be a vital administrative enforcement mechanism.

#### B. Chapter I—Introduction and Background

Chapter I of Circular 4702.1A is entitled, "How to Use This Circular." The content of this chapter has been eliminated or moved to other chapters as appropriate. Some commenters expressed a preference for keeping the reference chart found in Chapter 1 of Circular 4702.1A; FTA has determined that the Table of Contents is sufficient for directing readers to the information applicable to their entity (i.e., transit provider, State, or MPO). Chapter I of the final Circular 4702.1B is an introductory chapter covering general information about FTA, how to contact us, the authorizing legislation for FTA programs generally, information about FTA's posting of grant opportunities on [Grants.gov](http://Grants.gov), definitions applicable to the Title VI Circular, and a brief history of environmental justice and Title VI. We have moved the table describing similarities and differences between Title VI and environmental justice, found in Appendix M of the proposed circular, to this chapter. Where applicable, we have used the same definitions found in rulemakings, other Circulars, and DOT Orders to ensure consistency.

Some commenters noted that low-income populations are not a protected class and thus references to low-income should be removed from the Title VI Circular. FTA has retained the references to low-income populations only in the service and fare equity analysis section in Chapter IV. Addressing low-income populations in these analyses assists FTA in meeting its obligation to identify and address environmental justice concerns. Further, FTA received many comments to the proposed EJ Circular regarding whether the EJ Circular required a separate analysis on service and fare equity from that required under Title VI. FTA considered these comments and decided that issues related to service and fare equity analyses should be consolidated in a single location in the final Title VI Circular. Consolidating FTA's guidance on service and fare equity analyses in the Title VI Circular will provide clarity to recipients and prevent duplication of efforts.

In the final circular, in response to commenters as well as experiences over the past year, FTA has removed from the Circular the definitions of adverse effect and disproportionate high and adverse effect, which are environmental justice terms. Instead, we have included a definition of "disproportionate burden," and applied this term to service and fare equity analyses for low-

income populations. As discussed further in Chapter IV, FTA will require recipients to perform separate equity analyses for minority and low-income populations for service and fare changes, but we have clarified and streamlined this process.

We have modified the definition of “disparate impact” for clarity. We decline to add a definition for “equity” or “service” in the definitions section, but we have added significant text in Chapter IV (as discussed below) to more clearly describe the steps in a service equity analysis. Some commenters indicated that FTA’s definition of “Limited-English Proficient,” (LEP) which includes individuals who speak English less than very well, not well, or not at all, was not consistent with the U.S. Census data. The Census Bureau explained to State and local governments in 2009 that LEP includes the “less than very well” category. *See* U.S. Census Bureau American Community Survey, What State and Local Governments Need to Know, at 12, n. 8, (Feb. 2009), <http://www.census.gov/acs/www/Downloads/handbooks/ACSstateLocal.pdf>. Individuals who speak English “well” (or “less than very well”) are considered to have limited-English proficiency. Therefore, FTA’s proposed language is correct and we have not changed it.

Several commenters noted possible inconsistencies with the definitions of “minority” and “minority populations,” which FTA did not propose changing. FTA has confirmed that the definition of “minority” included in the final Circular is the same definition used by the Office of Management and Budget (OMB), which provides that these categories are the minimum set for data on race for Federal civil rights compliance reporting. *See* OMB’s Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity.

Several commenters noted the definition for “low-income,” which FTA did not propose changing, was not consistent with other Federal agencies’ definitions. The definition is the same definition DOT uses for purposes of addressing environmental justice concerns, so we have retained the existing definition in order to maintain consistency within the Department. However, recipients may use a more inclusive definition of low-income, e.g., 150% of poverty level, or incomes at a certain percentage of median household income, etc., if they choose, provided the threshold is at least as inclusive as the U.S. Department of Health and Human Services (HHS) poverty guidelines. A few commenters requested

that FTA define the term “low-income transit route;” we have limited the application of “minority transit route” to service monitoring and are not using the definition for service equity analyses, so decline to provide a definition of low-income transit route. FTA has ensured that the definitions for “low-income,” “minority,” “low-income populations” and “minority populations” are the same in both the environmental justice and Title VI Circulars. Some commenters expressed a preference for identifying minority populations based on shared travel patterns rather than by living in geographic proximity. The definition of “minority populations” is a definition used in other DOT documents, notably the DOT Order on Environmental Justice, and we are retaining the definition for Departmental consistency. However, as explained in the service equity section, where recipients have ridership data, it may be more appropriate to conduct analyses on the basis of that data instead of residential Census data.

FTA received several comments on its proposal to reinstate the definition of “minority transit route,” a term removed during the 2007 Circular revision. We proposed some added flexibility to the definition, allowing recipients to base the determination on route mileage, demographics, or ridership. In response to comments, we have made clarifying changes to this definition. A “minority transit route” is one in which at least one-third of the revenue miles are located in a Census block or block group, or traffic analysis zone where the percentage minority population is greater than the percentage minority population in the service area. Recipients may supplement that data if they have ridership data and adjust route designations accordingly. For example, a commuter bus that picks up passengers in generally non-minority areas and then travels through predominantly minority neighborhoods but does not pick up passengers who live closer to downtown might be more appropriately classified as a non-minority route, even if one-third of the route mileage is located in predominantly minority Census tracts or block groups. On the other hand, a light rail line may carry predominantly minority passengers to an area where employment centers and other activities are located, but the minority population in the surrounding Census tracts or block groups does not exceed the area average. This route may be more appropriately classified as a minority

transit route. Chapter IV of the Circular, as well as the appendices, includes information regarding the practical application of minority transit routes in service monitoring.

Some commenters had suggestions related to the definition of “predominantly minority area,” which FTA did not propose changing. The definition provides that a predominantly minority area is a geographic area, such as a neighborhood, Census tract, or traffic analysis zone, where the proportion of minority persons residing in that area exceeds the average proportion of minority persons in the recipient’s service area. In response to comments, we have added the term Census block groups to the list of geographic areas, but note the definition uses the phrase “such as,” so the list is not exhaustive. Commenters asked that FTA allow recipients to define a predominantly minority area; the definition in the circular is consistent with the definition of minority transit route, and we prefer to maintain that consistency. Commenters suggested that the definition include neighboring geographic areas, but neighboring geographic areas would be independently evaluated against the minority population in the service area.

Several commenters asked whether section 5310 non-profit subrecipients are transit providers. For purposes of this circular, FTA considers section 5310 subrecipients to be transit providers. However, when a non-profit section 5310 subrecipient provides closed-door service to its own clients, FTA considers these operators to be demand-responsive providers and not subject to the requirements of Chapter IV. As subrecipients, these providers may adopt the Title VI Program of the primary recipient that passes funds through to them, or they may develop their own Title VI Program that is compliant with Chapter III. Note that some section 5310 subrecipients are public entities that provide fixed route service, and in that case, the provider will have to comply with Chapter IV.

As a result of a number of comments to the docket related to service standards and reporting thresholds, FTA is adding definitions for “demand response,” “fixed route,” and “non-profit.” Discussion of how these terms relate to service standards and reporting thresholds are included in the section describing the revisions to Chapter IV.

We proposed using the term “recipient” to mean any recipient, whether a direct recipient, a designated recipient, a primary recipient, or a subrecipient. Some commenters

objected to this practice, stating it is confusing, while other commenters asked that FTA consolidate or simplify the various types of recipients. In the circular we have only used the term “recipient” when we mean all recipients—when we are specifically addressing the requirements for a specific type of recipient, we use that term. When addressing requirements for all recipients, including subrecipients (as in Chapter III), it is simpler to use one term.

A number of commenters stated that the definition of “service area,” which refers to the geographic area in which a transit agency is authorized to operate by “local laws” should instead refer to “its charter.” We have made this change. One commenter indicated that the definition seemed to exclude regional service areas that cross state lines; however, the definition covers several different scenarios and we believe this one is covered.

Finally, this chapter includes a section describing environmental justice that references the EJ Circular that FTA published in July, 2012. This section provides a permanent cross-reference to that guidance. Commenters were supportive of this section and stated the discussion was helpful. In addition, we have moved the chart that was in Appendix M of the proposed Circular to this chapter, in order to have all the environmental justice information in one place.

### *C. Chapter II—Program Overview*

We proposed amending some of the content of this chapter. As previously stated, we moved the definitions to Chapter I. Chapter II starts with the Title VI program objectives found in Circular 4702.1A and is followed by statutory and regulatory authority, as well as additional authority for the policies, requirements and recommendations stated in the Circular. In response to comments, we have added language to section 2 following the discussion of the Civil Rights Restoration Act of 1987, stating that compliance with the Circular does not relieve the recipient from the requirements and responsibilities of DOT’s Title VI regulation. In other words, the recipient may engage in activities not described in the Circular, such as regional information systems, one-call centers, ridesharing programs, or roadway incident response programs. FTA notes that the Civil Rights Restoration Act of 1987 clarified that Title VI includes all programs and activities of Federal aid recipients. The Circular only provides guidance on the transit-related aspects of an entity’s activities. Recipients are

responsible for ensuring that all of their activities are in compliance with the DOT Title VI regulation. Consistent with FTA’s goal of separating Title VI and EJ and developing the EJ Circular, we removed references to environmental justice. We proposed moving the “determination of deficiencies” subsection in the Reporting Requirements section and the Determinations section to Chapter VIII, Compliance Reviews. FTA has adopted these changes in the final circular.

In the existing Reporting Requirements section, as well as in other places throughout Circular 4702.1A, there is a statement that recipients are required to submit Title VI Programs every three years, or every four years in the case of metropolitan planning organizations (MPOs) that are direct recipients of FTA funds. We proposed amending the reporting requirement so that all recipients are required to submit a Title VI Program every three years. Some MPOs objected to this proposal, stating their planning cycles are four-year cycles; however, FTA believes all recipients should report on the same three-year schedule for purposes of consistency. We proposed amending the Reporting Requirements section further by including a requirement that a recipient’s board of directors or appropriate governing entity approve the Title VI Program before the recipient submits it to FTA. Most commenters agreed that this requirement would provide more accountability and awareness of Title VI requirements and compliance, while some stated this requirement would be time-consuming, onerous, and could over-politicize the Title VI Program, and requested alternatives, such as sign-off by a CEO or other official. FTA expects the requirement for board of directors or appropriate governing entity approval will add clarity and transparency to implementation of the Title VI Program at the local level, and we have adopted this proposal. We have clarified that the official(s) approving the Title VI Program should be the official(s) responsible for making policy decisions for the agency. We would note that a board of directors meeting is a public meeting, and approval of the Title VI Program in a public manner ensures the Title VI Program is a public document. Thus, having the Board chair and general manager jointly sign off on a Title VI Program, or delegating approval to an advisory committee, as suggested by some commenters, would not meet the transparency objective FTA is seeking. Recipients will be required to

submit, with the Title VI Program, a copy of the Board resolution, meeting minutes, or similar documentation as evidence that the board of directors or appropriate governing entity has approved the program.

Several commenters stated there should be a public participation requirement in the development of the Title VI Program. FTA declines to make this a requirement; some elements of the Title VI Program, such as those related to service and fare equity analysis, require varying levels of public participation. In addition, as stated above, the new requirement that a Title VI Program be approved by officials responsible for policy decisions, such as a board of directors or equivalent entity, necessarily requires a public notification process, which FTA believes is sufficient.

Finally, in response to numerous questions and comments about contractors, we have added a section to this chapter regarding the applicability of the Circular to contractors. There were several questions about the difference between subrecipients and contractors, and the reporting responsibilities of each, and one request to provide a definition of contractor in the Circular. While both subrecipients and contractors “stand in the shoes” of the recipient, the reporting requirements are different. When a primary recipient passes funds through to a subrecipient, the subrecipient is responsible for developing its own Title VI Program, although it may adopt all or certain elements of the primary recipient’s Title VI Program. In accordance with the DOT Title VI regulation, the subrecipient is also responsible for reporting its Title VI compliance to the entity from which it receives funds, and that entity must monitor the compliance of the subrecipient. A contractor, on the other hand, such as an entity that contracts with a city to provide transit service, does not develop its own Title VI Program; it complies with the recipient’s Title VI Program, and the recipient ensures the contractor’s compliance. This same principle applies to subcontractors—subcontractors must comply with the recipient’s Title VI Program, they do not develop their own Title VI Programs. Because the term “contractor” has a generally accepted meaning, we decline to add a definition in the Circular.

### *D. Chapter III—General Requirements and Guidelines*

Chapter III in Circular 4702.1A is “Requirements for Applicants.” We proposed eliminating the one-page chapter dedicated to applicants, and

consolidating this information into what is included in Chapter IV of Circular 4702.1A. Thus, Chapter III in Circular 4702.1B has the same name as Chapter IV in Circular 4702.1A: "General Requirements and Guidelines" and includes content from Chapters III and IV of Circular 4702.1A. Commenters suggested amending the requirements for first-time applicants, but these requirements are consistent with U.S. Department of Justice regulations at 28 CFR Section 50.3, so we decline to make further changes to this section.

We proposed keeping much of the content of Chapter IV of Circular 4702.1A in this chapter, but we reformatted the chapter to provide more clarity. Chapters III, IV, V and VI, which describe the specific requirements for different types of recipients' Title VI Programs, follow the same format. Each of these chapters starts with an introduction and some general information. Following that is the requirement to prepare and submit a Title VI Program. The section describing the Title VI Program, in each chapter, cites the regulation and includes the regulatory text or a summary of the regulatory text. It provides information on Board or other policy-making governing entity approval of the Title VI Program. It then lists the elements required in the Title VI Program for that type of recipient. The sections following the Title VI Program submission requirements describe in more detail what FTA expects, and provide direction to assist recipients with compliance. Commenters expressed support for the changes FTA made to the format of the Circular.

Section (4) of Chapter III outlines the basic requirements for submitting a Title VI Program, and provides the list of elements that must be in every recipient's (and subrecipient's) Title VI Program. Since Chapter III applies to all recipients, we include in this chapter information on how to upload a Title VI Program into FTA's Transportation Electronic Award Management (TEAM) system. The Title VI Program must be uploaded to TEAM no fewer than sixty calendar days prior to the date of expiration of the previously approved Title VI Program. This is a new requirement, but FTA has previously asked for voluntary submission of revised Title VI Programs thirty days in advance of expiration of the previously approved Title VI Program. As discussed in the Implementation plan, above, on or about October 1, 2012, FTA will post on its Web site information about each recipient's new "due date" and "expiration date." Providing an orderly and staggered submission of

Title VI Programs will enable FTA to review Title VI Programs more quickly and provide technical assistance as needed to ensure recipients are submitting Title VI Programs on which FTA can concur. This section also notes how the status of a recipient's Title VI Program will be noted in TEAM. The three status determinations are "concur," "in review" and "expired." This is a revision to our proposed determinations of "approval," "conditional approval," "pending," and "expired." This is a management tool that will allow FTA to more accurately determine when a Title VI Program is up-to-date. We proposed removing the "eliminating redundancy" subsection in the existing Circular, as we have determined that recipients must include all required information in each Title VI Program submission. One commenter objected to removal of this provision; we continue to believe that recipients must submit a complete Title VI Program every three years, even if there are elements that are unchanged.

We proposed continuing the reporting requirement exemption for the University Transportation Center Program, National Research and Technology Program, Over the Road Bus Accessibility Program and Public Transportation on Indian Reservations program. We also included a new provision that FTA may exempt a recipient, upon receipt of a request for waiver submitted to the Director of the Office of Civil Rights, from the requirement to submit a Title VI Program, or from some elements of the Title VI Program. Commenters asked about what sort of situation would justify an exemption; there may be unique situations that justify an exemption, and FTA wishes to have this flexibility. The absence of the requirement to submit a Title VI Program does not obviate the underlying obligations to comply with Title VI.

FTA received several comments on section (4) of Chapter III. Some commenters wanted to know what the penalty would be for not submitting an updated Title VI Program the proposed 30 days prior to expiration. A recipient who submits its Title VI Program after its due date runs the risk of having draw-down privileges suspended, or grants not processed. Further, a Title VI Program can only be in "in review" status for 60 days, so it is in the best interest of the recipient to submit the Program 60 days prior to expiration. In the event it takes longer than 60 days for FTA to review a Title VI Program, the status will remain "in review" until FTA has completed its review, although FTA expects that Title VI Programs will

be reviewed within this time period. In the event a submitted Title VI Program does not meet the requirements of the Circular and the problems are not corrected by the expiration date, the status will change to "expired" and draw-down privileges may be suspended and grant processing could be impacted. In response to comments that FTA should require recipients to submit Title VI Programs annually for review, an annual submission cannot be effectively administered by either recipients or FTA. However, FTA can request information from recipients at any time if FTA has concerns about Title VI compliance.

Some commenters asked about subrecipient submission of Title VI Programs to primary recipients, and others questioned the feasibility of including subrecipient Title VI Programs in the primary recipient's submission to FTA. Primary recipients may set a three-year schedule for their subrecipients that may or may not conform to the primary recipient's three-year reporting schedule to FTA. This will allow primary recipients with numerous subrecipients to stagger those submissions. In response to comments, FTA has amended the reporting requirement to remove the provision about including copies of subrecipient's Title VI Programs when primary recipients submit their Title VI Programs to FTA. FTA agrees that it can review subrecipient Programs during State Management Reviews, Triennial Reviews, and Title VI Compliance Reviews of primary recipients. Some commenters suggested that requiring all subrecipients to complete a Title VI Program is burdensome and may discourage potential subrecipients from applying for Federal funding, while others requested that subrecipients receiving small amounts of funds not be subject to Title VI reporting. All subrecipients of Federal funding are required to comply with Title VI, so we decline to remove the reporting requirement; however, recipients and subrecipients that provide demand response service, including vanpools, general public paratransit, ADA complementary paratransit, and, as discussed above, non-profit entities that receive section 5310 funds solely to serve their own clientele (i.e., closed-door service), are only required to comply with the Chapter III requirements. Further, all subrecipients may choose to adopt the primary recipient's notice to beneficiaries, complaint procedures and complaint form, public participation plan, and language assistance plan. We have

added language to this section to clarify this.

The remainder of Chapter III consists of detailed descriptions of each element of a Title VI Program. In regard to the requirement to develop and post a notice for beneficiaries about their rights under Title VI, commenters asked for suggestions regarding where the notice should be posted, specifically which locations are required and which are recommended; requested that the dissemination should include non-passengers; and that the notice include other protected classes, such as age, gender and disability. In response, FTA has provided that at a minimum, the notice must be available on a recipient's Web site and in public areas of its offices. We encourage recipients to post notices at stations or stops, and/or on transit vehicles. FTA has no objection to recipients including a general non-discrimination provision in their Title VI notices, as long as it is clear which groups are protected under Title VI.

Commenters requested that documentation related to Title VI investigations, complaints and lawsuits be made readily available to the public. This information must be reported in all recipients' and subrecipients' Title VI Programs, which require Board or other policy decision-making entity approval, which means the entire Title VI Program is available to and may be requested by members of the public. We made one change to section 6, Requirement to Develop Title VI Complaint Procedures and Complaint Form: a requirement to post the complaint form and complaint procedures on the recipient's Web site. This will provide better access to individuals who want to file a complaint.

FTA proposed providing significantly more guidance in the public participation section than what is found in Circular 4702.1A, while still allowing wide latitude for recipients to determine how, when, and how often to engage in public participation activities, and which specific measures are most appropriate. The Circular references the public participation requirements of 49 U.S.C. Sections 5307(b) and 5307(c)(1)(I) (as amended by MAP-21, Public Law 112-141, July 6, 2012) as well as the joint FTA/FHWA (Federal Highway Administration) planning regulations at 23 CFR part 450. This section also cross-references FTA's EJ Circular 4703.1, which has a chapter devoted to effective public participation practices.

FTA received a number of comments on this section. In response to comments, we have changed the title of this section from "public involvement" to "public participation," and replaced

the word "involvement" with "participation" or "engagement" as appropriate. Several commenters asked for clarification of terms such as "consider" and "respond to" the needs of minority populations; unless otherwise defined, words have their generally understood meaning. Several commenters were concerned with language in this section that gives recipients wide latitude in part based on their available resources, stating this would allow agencies the discretion to budget inadequate resources for these activities. Given the wide variation in recipients' and subrecipients' budgets and size of populations served, it is clear to FTA that resources should be a consideration. Certainly it is not the only consideration, and FTA lists a number of factors recipients should consider in developing their public participation plans. Commenters asked FTA to define what the minimum requirements are for public participation, how transit providers would be held accountable for implementing their public engagement plan, and suggested that implementing the proposed strategies for public participation would require significant business process reengineering. In response, FTA will review the public engagement plan and its implementation when reviewing the Title VI Program triennially; as for minimum requirements, as stated above and in the Circular, recipients should take a number of factors into consideration when developing their public participation plans, including the types of activities under consideration, the population affected, and the resources available. Recipients should already be engaging in outreach activities designed to involve minority and LEP populations in activities that have a public participation requirement, and should consider that there are statutory and regulatory requirements for public participation. Commenters suggested that FTA provide more guidance to recipients in drafting public participation plans, asked whether the plan is supposed to be process or outcome oriented, and suggested that FTA should require recipients to engage in efforts to reach people in the service area who are not passengers of the transit system. In response, FTA's EJ Circular 4703.1 provides detailed guidance on public participation strategies, and we have included a reference to the EJ Circular in this section. Public participation efforts are by their nature process-oriented, as recipients can engage in substantial outreach and notification, set meeting

times and places that are accessible, but not have robust attendance. Further, outreach efforts are usually not limited to notices on buses or trains, but often include radio and television public service announcements, as well as newspaper advertisements. All of these methods will reach non-passengers. Recipients should document their efforts to engage the public. One commenter asked FTA to clarify the relationship between the Title VI Program and the public participation plan, and suggested the Title VI Program be an appendix to the public participation plan. While the public participation plan is an element of a Title VI Program, it is also a stand-alone document, into which Title VI considerations must be integrated. A recipient's public participation plan will cover much more than how to engage minority and LEP populations. In FTA's view, it would not be appropriate to append the Title VI Program to the public participation plan.

Section 9, Requirement to Provide Meaningful Access to LEP Persons, addresses the existing requirement for a Language Implementation Plan for Limited English Proficient (LEP) persons as well as a summary of the DOT LEP guidance. We proposed including a description of the four factor analysis, information on how to develop a Language Implementation Plan, and a summary of the "safe harbor" provision.

Section 9 is a summary of the LEP requirements outlined in Executive Order 13166, U.S. DOT LEP guidance, and U.S. DOJ LEP guidance. Importantly, FTA cannot make substantive changes to this section except to increase or decrease the amount of information provided. In response to comments, we have provided more guidance related to the four-factor analysis. Much of the information we added comes from a self-assessment tool available on DOJ's LEP Web site, [www.lep.gov](http://www.lep.gov). Despite commenter's requests to revise or eliminate the safe harbor threshold, the threshold is part of U.S. DOT and U.S. DOJ guidance and FTA cannot issue guidance that is in conflict with these provisions. We would also note that nothing in this section of the Circular is "new"—the Executive Order was issued in August 2000—so recipients should be conducting four factor analyses and making determinations about which vital documents should be translated, and into what languages. One commenter suggested that the Title VI Notice to Beneficiaries and complaint procedures should be translated; we agree and have included both of these

in the non-exhaustive list of vital documents in section 9.b. We decline to include an exhaustive list, but have included several categories of documents, as well as some specific documents, that should be translated based on a recipient's four factor analysis.

We proposed restoring the requirement, found in the U.S. DOT Title VI regulation 49 CFR part 21, but not Circular 4702.1A, that a recipient may not, on the grounds of race, color, or national origin, "deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program." We proposed that as part of the Title VI Program, for non-elected transit planning, advisory, or similar decision-making body, recipients shall provide a table depicting the racial breakdown of the membership of those bodies, and a description of the efforts made to encourage participation of minorities on such decision-making bodies. FTA received a number of comments on this proposal, generally stating that recipients often do not have control over who is appointed to a board of directors or other decision-making entity. In response, we have revised this section to align more closely with the regulation—it applies to planning and advisory councils or committees that are selected by a recipient, such as Community Advisory Committees, Access Committees, and other types of committees that have an advisory role to an entities' general manager or board of directors but not the board itself. In response to comments, we removed the requirement that such committees be representative of the demographics of the communities they serve; however, recipients must document their efforts to encourage the participation of minorities on such committees.

We proposed moving the topics, "Providing Assistance to Subrecipients" and "Monitoring Subrecipients," found in the Requirements for States chapter of Circular 4702.1A, to this chapter, as these are existing requirements that are applicable to all recipients that pass funds through to subrecipients, not just States. The requirement to collect Title VI Programs from subrecipients is a new requirement for transit providers that pass funds through to subrecipients, but we note that anytime a recipient passes funds through to a subrecipient, the entity passing funds through is responsible for ensuring its subrecipients are complying with all Federal requirements, not just Title VI. For those commenters concerned about the large number of Title VI Programs they will receive, and potential storage

issues, subrecipient Title VI Programs may be stored electronically. Collecting and reviewing each subrecipient's Title VI Program will assist the primary recipient/transit provider in ensuring all subrecipients are in compliance. The language in these sections is substantially similar to the language in Circular 4702.1A.

For section 10, Providing Assistance to Subrecipients, commenters suggested that the provision that primary recipients "should consider" providing information to subrecipients should be a requirement, and requested that FTA state that primary recipients should provide a means by which all subrecipients can collect and share data. We decline to mandate providing specific information to subrecipients, as not all subrecipients will need the same types of information from the primary recipient. We have added language regarding a central repository for information for subrecipients.

FTA received several comments on section 11, Monitoring Subrecipients. A key point that primary recipients should understand is that if the subrecipient is out of compliance with Title VI—or any other Federal requirement—then so is the primary recipient. Thus, it is in the best interest of the primary recipient to both assist its subrecipients with compliance, and monitor that compliance. In response to comments, we have revised the text to state that primary recipients must collect and review subrecipients' Title VI Programs. The Circular does not specify exactly how a primary recipient shall monitor a subrecipient's compliance, just that the primary recipient is responsible for documenting its process for ensuring subrecipients are complying with Title VI.

One commenter suggested that FTA develop a program of training and assistance to aid primary recipients in carrying out technical assistance for subrecipients. FTA will conduct ongoing training through webinars and in-person presentations in order to ensure recipients and subrecipients understand the requirements of the new Circular. Some commenters expressed a preference for thresholds for subrecipient reporting and monitoring, such that subrecipients that receive less than 'x' dollars would not be required to report to the primary recipient, and the primary recipient would not be required to monitor the subrecipients. FTA has taken steps to scale various requirements based on size of agency and number of people served, but all recipients and subrecipients must develop and submit Title VI Programs, all are monitored for compliance,

whether by FTA or a primary recipient, and all must comply with Title VI. One commenter asked about the authority for primary recipients to enforce subrecipient compliance; in FTA's view it is less a matter of enforcement than it is of monitoring and technical assistance. In the event of a complaint to FTA about subrecipient noncompliance, FTA would investigate and take appropriate enforcement action.

Several commenters expressed concern about FTA's proposal that relieves primary recipients of the responsibility for monitoring subrecipients when those subrecipients also receive funds directly from FTA, and, therefore, report to FTA directly. Some cited a recent Ninth Circuit case, *Armstrong v. Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010), in support of their position that a primary recipient's obligations under Title VI are not delegable. Each year, FTA publishes an apportionment notice, apportioning funds to designated recipients, which are designated by law to receive and apportion FTA funds. In many instances, the designated recipients do not actually receive the funds; they allocate the funds to entities in their region that apply for funds directly from FTA. These "direct recipients" enter into a supplemental agreement with FTA and the designated recipient for projects the designated recipient does not carry out itself. The supplemental agreement allows the direct recipient to apply for funds directly from FTA, and provides that the direct recipient will assume all responsibilities as set forth in the grant agreement. Further, the agreement provides that FTA and the direct recipient agree that "the Designated Recipient is not in any manner subject to or responsible for the terms and conditions of this Grant Agreement." Each grant agreement incorporates the terms of FTA's Master Agreement, which includes a provision that requires recipients to comply with Title VI. As a party to the supplemental agreement, FTA is therefore on notice that the direct recipient will be applying for funds and will be submitting a Title VI Program to FTA every three years.

Sometimes, a designated recipient will carry out projects itself or through subrecipients. Some of these subrecipients may also be direct recipients. Since these direct recipients are responsible for reporting to FTA, there is no need for them to also submit Title VI Programs to the designated (primary) recipient, and the primary recipient is not responsible for monitoring compliance of that subrecipient. FTA believes that a

requirement for dual reporting, as suggested by commenters, would be overly burdensome and would not result in improved compliance with Title VI.

Finally, we have removed the section, "Guidance on Conducting an Analysis of Construction Projects" and inserted in its place, "Determination of Site or Location of Facilities." The language in Circular 4702.1A addresses environmental justice concepts as incorporated into National Environmental Policy Act (NEPA) documentation, and we have moved this analysis to the EJ Circular. We proposed revising this section so that it cites the DOT Title VI regulation and describes the requirements related to siting facilities. Recipients must complete a Title VI analysis during project development to determine if the project will have disparate impacts on the basis of race, color, or national origin. If it will have such impacts, the recipient may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and there are no alternative locations that would have a less adverse impact on members of a group protected under Title VI.

Most of the comments on this section asked for examples of what constitutes a facility or project. We have revised this section to clarify that bus shelters are not facilities, since those are covered in transit amenities in Chapter IV. The types of projects to which this section applies include vehicle storage facilities, parking lots, maintenance and operations facilities, etc. Projects related to passenger service, such as power substations for light rail, passenger stations, etc., will be evaluated during project development and the NEPA process.

#### *E. Chapter IV—Requirements and Guidelines for Fixed Route Transit Providers*

Chapter IV covers much of the information that is in Chapter V of Circular 4702.1A. Consistent with our desire to have the chapters follow the same format, this chapter starts with an introduction, includes a description as to which entities it applies, and then describes the requirement to prepare and submit a Title VI Program, followed by specific information related to each of the elements contained in the Title VI Program.

In Circular 4702.1A, Chapter V applies to "recipients that provide service to geographic areas with a population of 200,000 people or greater under 49 U.S.C. 5307." This sentence has created some confusion as to

whether recipients in areas with populations over 200,000 but that do not receive funds under 49 U.S.C. 5307 are required to comply with this chapter. In order to eliminate this confusion, we proposed a new threshold: Any provider of public transportation, whether a State, regional or local entity, and inclusive of public and private entities, with an annual operating budget of less than \$10 million per year in three of the last five fiscal years as reported to the National Transit Database (NTD) would only be required to set system-wide standards and policies. Providers of public transportation (also referred to as transit providers) with an annual operating budget of \$10 million or more in three of the last five consecutive years as reported to the NTD; transit providers with an annual operating budget of less than \$10 million but that receive \$3 million or more in New Starts, Small Starts or other discretionary capital funds; and transit providers that have been placed in this category at the discretion of the Director of the Office of Civil Rights in consultation with the FTA Administrator, would be required to set system-wide standards and policies, collect and report demographic data, conduct service and fare equity analyses, and monitor their transit service.

FTA received numerous comments on this proposal, many from transit providers in small urbanized areas with annual operating budgets of \$15–20 million. Some of the commenter's stated objections included: This change would result in a new unfunded mandate on transit systems in small urban and rural areas; the reporting requirements would have budgetary impacts that would affect the provision of transit service; lumping providers in small and rural areas with large urbanized areas was unreasonable; and the \$3 million discretionary grant threshold would discourage small providers from applying for those grants. Commenters made a number of suggestions for alternative thresholds, including keeping the same threshold that is in Circular 4702.1A, using the NTD small system waiver for providers with fewer than 30 vehicles in peak service, and using a 100 bus threshold. In addition, many rural and small urban providers questioned the applicability of the reporting requirements to general public demand response service.

In response to comments, and after examining several options, FTA agrees that this chapter will apply only to fixed route transit providers. Further, only transit providers in large urbanized areas with 50 or more fixed route

vehicles in peak service will be responsible for the more comprehensive reporting requirements. "Vehicles" includes any vehicle used in revenue service, such as buses, ferries, and railcars. All other fixed route transit providers, regardless of population of the area, will only be required to set system-wide standards and policies. In the Circular we have clarified that providers that only operate general public demand response, Americans with Disabilities Act complementary paratransit, vanpools, and section 5310 non-profits that serve only their own clientele (closed-door service) will be responsible only for Chapter III reporting requirements.

This threshold ensures that small transit providers in large urbanized areas will no longer be required to collect and report data, conduct service and fare equity analyses, and monitor their transit service. We have retained the provision that allows the Director of the Office of Civil Rights, in consultation with the FTA Administrator, to require a recipient to submit a more comprehensive Title VI Program, as when a transit provider has a one-time or ongoing issue, likely related to a complaint or otherwise compliance-related.

We proposed revising the description of the requirement in Circular 4702.1A to set system-wide service standards and policies. We proposed removing the "transit security" policy, as a transit provider's security policy may be impacted by considerable outside factors that are not within the control of the transit provider. We proposed blending the requirements in one section that covers both standards and policies, rather than listing them separately. In the final Circular, the standards and policies for vehicle load, vehicle headway, on-time performance, service availability, transit amenities and vehicle assignment remain substantially the same as proposed, except we removed intelligent transportation systems (ITS) from the list of amenities. In Circular 4702.1A, FTA recommends that recipients report on these standards and policies, and allows recipients to report on other standards and policies. In contrast to Circular 4702.1A, we proposed that recipients will be required to report on these specific standards and policies, rather than selecting different measures on which to report. In practice, this is not a significant change, since most transit providers report on these standards and policies, and do not select other standards or policies on which to report.

As discussed above, the requirement to set system-wide service standards and policies will apply to all fixed route transit providers, regardless of population of the service area. The requirement to set these standards and policies is a new one for fixed route transit providers in small urban and rural areas. Some commenters located in these areas stated they are not currently developing standards, and in some cases they do not have the personnel or technology to capture on-time performance or vehicle load data. From a business and customer service perspective, it is important for transit providers to know if their routes are running on time and how often or whether there is standing-room-only space on the bus. These measures are not difficult to capture, and this sort of basic data helps transit providers plan and ensure they are providing a quality service. It is likely that FTA would only ask for monitoring data from these transit providers in the event there is a complaint or a problem noted in a compliance review.

FTA has adopted the proposed requirement that all fixed route providers will report on the same standards and policies. Upon review of issues raised by commenters, we have clarified that transit providers will set service standards by mode, and the standards for each mode may be different. For example, a transit provider with local bus service, bus rapid transit (BRT) and light rail will likely have different vehicle load standards and headways depending on the mode, ridership, peak and off-peak weekday hours, weekends, owl service, etc. Even on-time performance standards may be different, given that light rail and possibly BRT travels on an exclusive fixed guideway, where local bus service travels with other traffic. In addition, the standards are transit provider-specific, not industry-specific or even region-specific, and will depend on the characteristics and nature of the service being provided.

Some commenters questioned the relevance of the standards and policies in the circular, and preferred to develop alternative standards and policies. The standards and policies that FTA is requiring transit providers to set are directly related to what passengers experience. Frequency of service, on-time performance, the presence or absence of bus shelters and trash cans are part of the customer experience, and are important not only from a Title VI perspective, which strives to ensure that all passengers are having similar experiences regardless of race, color, or national origin, but also from a customer

service perspective generally. The circular does not require a specific frequency of service, set a vehicle load standard, or mandate a certain level of service availability. These are all local decisions. Once the transit provider has made these decisions, by setting its own system-wide standards and policies, it has an obligation to ensure the service is provided in a nondiscriminatory manner.

Circular 4702.1A allows transit providers to choose among options for demographic data collection, service monitoring, and service and fare equity analyses. These options were added during the last revision of the Circular in 2007, to "reduce administrative burdens by giving recipients and subrecipients greater flexibility to meet requirements through procedures that best match their resources needs, and standard practices." (72 FR 18732, 18735, Apr. 13, 2007). In reality, providing options, including the option to develop a local alternative, has created confusion and inconsistency. Therefore, we proposed removing the options and providing one method of compliance for each of these areas. By eliminating options and clearly stating what is required for compliance, we add certainty for recipients and streamline the Title VI Program review process. Only a few commenters objected to FTA removing the options, and for the reasons stated above, we have adopted the proposal to remove options and have just one method of compliance.

The requirement to collect and report demographic data applies only to transit providers with 50 or more fixed route vehicles in peak service in large urbanized areas. Circular 4702.1A allowed three different options for collecting and reporting demographic data. We proposed eliminating the options and requiring one method of compliance with a simplified and streamlined customer survey data requirement. In Circular 4702.1A, transit providers are required to collect data on travel time, number of transfers, overall cost of the trip, as well as how people rate the quality of service. We proposed instead that transit providers collect data on travel patterns, such as trip purpose and frequency of use.

Commenters expressed concern about the requirement that surveys be conducted every three years, citing the cost of such surveys as a barrier to implementation. In response, FTA has changed the required frequency to not less than every five years. Surveys may be completed in conjunction with other surveys, such as origin and destination surveys used to update travel demand models. Several commenters suggested

that Census block groups may provide better data than Census tracts; we agree and have added Census block groups as an option for the demographic maps. Some commenters requested that Census data be the basis for demographic information, as opposed to surveys. Census data is very useful for determining the demographics of a service area, but is not necessarily indicative of the demographics of a transit provider's ridership. When transit providers have ridership data, they can more accurately identify minority and non-minority routes and determine travel patterns, which will assist in determining frequency of use, how many passengers must transfer to get from their origins to their destinations, etc. Commenters suggested that American Community Survey may be a better source of community demographic data, especially between Census counts. FTA has added ACS data as an acceptable source, at the option of the transit provider.

The requirement to monitor transit service applies only to transit providers with 50 or more fixed route vehicles in peak service in large urbanized areas. Circular 4702.1A allows four different options for monitoring service. We proposed removing the options and having one means of complying with the requirement to monitor transit service. As in Circular 4702.1A, transit providers must monitor their transit service against the system-wide standards and policies set by the transit provider. At a minimum, such monitoring will occur every three years and the transit provider will submit the results as part of its Title VI Program. Prior to submitting the information to FTA, we proposed that transit providers will be required to brief their board of directors or appropriate governing entity regarding the results of the monitoring program, and include a copy of the board meeting minutes, resolution, or other appropriate documentation demonstrating the board's consideration of the monitoring program.

Some commenters requested that we consider keeping the local option; as we stated above, by eliminating options and clearly stating what is required for compliance, we add certainty for recipients and streamline the Title VI Program review process, so we have adopted the proposal that there be one method for complying with the service monitoring requirement. We have reorganized this section from what was proposed, without significantly changing the substance. Three commenters asked for further clarification on developing policies or procedures to determine whether

disparate impacts exist on the basis of race, color, or national origin; Appendix J provides examples that are illustrative of this determination.

The requirement to perform service and fare equity analyses applies only to transit providers with 50 or more fixed route vehicles in peak service in large urbanized areas. Circular 4702.1A allows two options for evaluating service and fare changes; we proposed removing the option for a locally developed alternative and having one means of complying with the requirement to perform service and fare equity analyses. We proposed that each transit provider to which this section applies will: describe in its service equity analysis its policy for a major service change; describe how the public was engaged in the development of the major service change policy; describe the datasets the provider will use in the service change analysis; prepare maps; analyze the effects of proposed service changes; and analyze the effects of proposed fare changes. In addition, we proposed the transit provider will assess the alternatives available for people affected by the fare increase or decrease or major service change, including reductions or increases in service. Finally, we proposed the transit provider will determine if the proposals would have the effect of disproportionately excluding or adversely affecting people on the basis of race, color, or national origin, or would have a disproportionately high and adverse effect on minority or low-income riders.

FTA received numerous comments on the service and fare equity section of this chapter. Beginning with the definition of a major service change, commenters suggested that transit agencies be required to define major service change based on actual changes implemented in the previous 3–5 years; suggested that FTA should define what constitutes a major service change, so there isn't a "hodgepodge" of major service change policies around the country; and suggested that FTA require that major service change policies account for cumulative impacts of service changes. We decline to accept these suggestions; however, we have added language to this section that requires transit providers to engage the public when establishing the threshold for a major service change. In addition, we have added language suggesting that the threshold for analysis should not be set so high so as to never require an analysis; and, because the amount of service varies from community to community, we have stated that the threshold should be selected in order to

yield a meaningful result in light of the transit provider's system characteristics.

Commenters had a number of questions and suggestions about when to conduct a service and fare equity analysis, how to determine if there is a disparate impact, how to conduct separate Title VI and environmental justice analyses, and when a service and fare equity analysis must be submitted to FTA. In response to these and other comments, as well as in response to recent compliance reviews and other events that have occurred since we published the proposed Circular, we carefully reviewed the disparate impact case law and re-drafted this section in order to provide better guidance to transit providers about how to conduct these analyses. We have added a section on developing a disparate impact policy and clearly defined the legal test. We have removed the reference to minority transit route for service equity analyses, and instead provide guidance on how to select the appropriate comparison populations with which to compare the impacts on minority populations. We have separated out the Title VI and EJ analyses and clarified that if there are populations that are both minority and low-income, then a Title VI disparate impact analysis must be completed. Only when an affected population is solely low-income would a transit provider conduct an EJ analysis. Service and fare equity analyses must be submitted to FTA every three years when the transit provider submits the Title VI Program; however, FTA is available to provide technical assistance to transit providers, and in the event of a complaint, may ask to see a service and fare equity analysis in advance of a Title VI Program submission.

A number of commenters suggested that temporary, short-term, or promotional fares should be exempt from a fare equity analysis. We agree and have added three exceptions to the requirement that fare equity analyses be completed prior to fare changes. "Spare the air days" or other promotional "everyone rides free" days do not require a fare equity analysis, since all passengers will ride for free. In addition, a promotional fare reduction that will last six months or less does not need to be analyzed in advance. If the fare becomes permanent or otherwise lasts longer than six months, then the transit provider must conduct a fare equity analysis. Third, a temporary fare reduction that is a mitigating measure for another action, such as closure of rail stations that requires passengers to alter their travel patterns, does not require a fare equity analysis. Several commenters suggested that agreements

for free or reduced fares provided to individuals in exchange for a community or sponsor subsidy should not be subject to equity analysis. It seems to us that in this situation, the transit provider has set the fare and someone other than the passenger is paying for it. In this case, we agree that a fare equity analysis is not required unless the transit provider changes the fare.

Finally, we proposed that a transit provider would be required to perform fare and service analyses for New Starts, Small Starts, and other new fixed guideway capital projects prior to entering into a Full Funding Grant Agreement (FFGA) or Project Construction Grant Agreement (PCGA), and updated immediately prior to start of revenue operations. Commenters generally objected to doing a service and fare equity analysis at the time of an FFGA or PCGA, as the project could still be many years from revenue operation. We agree and have revised this requirement accordingly, such that a service and fare equity analysis must be completed when the project is six months from revenue operation. At the suggestion of a commenter, we have also removed the reference to Federal funding of the project as a condition for conducting the service and fare equity analyses. Pursuant to the Civil Rights Restoration Act of 1987, it does not matter if the specific project receives Federal funding if the transit provider receives Federal funding.

#### *F. Chapter V—Requirements for States*

This chapter addresses requirements for States that administer FTA programs. As in Circular 4702.1A, States must submit a Title VI Program. This chapter clarifies that States are responsible for including in their Title VI Program the information required from all recipients in Chapter III, and that States providing fixed route public transportation are responsible for the reporting requirements for providers of fixed route public transportation in Chapter IV, in addition to the information required in Chapter V. For clarity, we proposed including as required elements in the Title VI Program all of the elements under the "Planning" section in Circular 4702.1A, as well as the elements listed for the Title VI Program in the existing Circular. We also proposed cross-referencing information related to Title VI that FTA and FHWA jointly assess and evaluate during the planning certification reviews. As in Circular 4702.1A, States are responsible for monitoring their subrecipients, whether

those are planning subrecipients or transit provider subrecipients.

FTA received a few comments on this chapter and we have made several revisions. As with other primary recipients, we have removed the requirement that States submit subrecipient Title VI Programs to FTA. States shall collect subrecipient's Title VI Programs, on a schedule determined by the State, and those submissions may be staggered. Title VI Programs may be collected and stored electronically. We have clarified that demographic maps shall analyze the impacts of the distribution of State and Federal funds in the aggregate for public transportation purposes, clarified that these maps should be developed using Census or ACS data, and that minority data may be provided in the aggregate. Commenters asked for clarification on the demographic maps analyzing impacts of the distribution of funds (proposed paragraph V.2.d.) and the analytical process that identifies investments and potential disparate impacts (proposed paragraph V.2.f.). We have more clearly stated the expectation and provided the disparate impact legal test. Some commenters asked about subrecipient reporting requirements; we direct readers to this discussion in Chapter III—to reduce the burden on primary recipients and subrecipients, subrecipients may choose to adopt the primary recipient's notice to beneficiaries, complaint procedures and complaint form, public participation plan, and language assistance plan.

#### *G. Chapter VI—Requirements for Metropolitan Planning Organizations*

The proposed chapter VI equates to chapter VII in Circular 4702.1A. While MPOs are required, in Circular 4702.1A, to submit a Title VI Program, the chapter is not clear that the information listed is supposed to be included in the Title VI Program, along with the requirements for all recipients. Therefore, we proposed a substantial rewrite of this chapter that clarified the reporting requirements. Since an MPO may fulfill several roles, including planning entity, designated recipient, direct recipient of FTA funds, and a primary recipient that passes funds through to subrecipients, we clarified the Title VI reporting requirements for each of these roles.

MPOs were generally supportive of the changes to this chapter. Some of the reporting requirements for States and MPO's are the same, so we have made the same changes to the MPO chapter that we made to the State chapter; namely, that minority data may be obtained from the Census or ACS, the

data may be aggregated, State and Federal funding may be aggregated, and we have provided the disparate impact legal test. Commenters suggested that for both Chapter V and Chapter VI, States and MPOs be required to use demographic maps that show data at the Census block group level. While it may be appropriate to do some planning analysis at that level, particularly for fixed projects such as maintenance facilities, we decline to require this. We have clarified in both chapters that data should be displayed at the Census tract or block group level. Some commenters requested comprehensive guidance on the planning process be included in the Title VI Circular; however, FTA and FHWA have developed comprehensive guidance on this process and we do not believe it needs to be stated in the Title VI Circular. Some commenters expressed a preference to keep the MPO Title VI reporting requirement to every four years; however, as discussed above, FTA has determined that all recipients will be on a three-year schedule.

#### *H. Chapter VII—Effecting Compliance With DOT Title VI Regulations*

This chapter is Chapter X in Circular 4702.1A. FTA believes it makes sense from a flow and format point of view to move this chapter up, followed by compliance reviews in Chapter VIII and complaints in Chapter IX. This chapter generally tracks the DOT Title VI regulation at 49 CFR Sections 21.13 and 21.15.

Some commenters suggested there should be a public participation process for the development of corrective action plans for noncompliant recipients. One commenter suggested that recipients should submit a copy of the board resolution, meeting minutes, or similar documentation with evidence that the board of directors or appropriate governing entity or official(s) has approved the remedial action plan. We decline to include a public participation component in the development of a corrective action plan, but having the plan approved by the board of directors or appropriate governing entity means the plan will be available to the public. We revised this chapter accordingly.

#### *I. Chapter VIII—Compliance Reviews*

Chapter VIII, Compliance Reviews, is substantially similar to Chapter VII of the same name in Circular 4702.1A. We proposed removing from the list of criteria, “the length of time since the last compliance review,” as in practice FTA has not used this criterion. As in other chapters, we use the word “recipient” to include subrecipients. In Section 6, we proposed removing the

opportunity for recipients to review and comment on a draft compliance review. This is consistent with changes we are making in other civil rights processes, and generated the most comments. We decline to put this provision back in the Circular, as recipients participate in an exit interview with the compliance review team, so there should be no surprises in the final report. In addition, there is opportunity to provide information to the review team subsequent to the completion of the review and prior to publication of a final report.

#### *J. Chapter IX—Complaints*

The proposed Chapter IX contains most of the same content that is Chapter IX of Circular 4702.1A. FTA proposed removing the “letter of resolution” in Section 4 as it is duplicative of the “letter of finding” issued when a recipient is found to be noncompliant with the DOT Title VI regulations. We also proposed removing the appeals process, as it is not required by the regulation and removing it will assist with more efficient administration of the Title VI Program. We have added information relating to when a complaint will be administratively closed.

Several commenters suggested that FTA notify complainants once their complaint has been accepted, notify complainants if FTA finds noncompliance following a complaint, and define timelines for resolutions of complaints to FTA. FTA does notify complainants of the status of their complaints, and provides a letter at the conclusion of an investigation as to the findings, as stated in section 5 of this chapter. We decline to include timelines, as the amount of time it takes to investigate and resolve a complaint depends on a number of factors, including the complexity of the complaint. Commenters requested that we reinstate the appeals process language, but we decline to do so. In the event a complainant is not satisfied with the outcome, complainants may contact FTA's Civil Rights Office to discuss.

#### *K. Appendices*

The proposed appendices are intended as tools to assist recipients in their compliance efforts. FTA proposed adding nearly 40 pages of appendices in order to provide more clarity and examples of what must be included in a Title VI Program and the type of analysis that recipients shall conduct.

Numerous commenters stated that the appendices would be very helpful to recipients. The vast majority of comments received on the appendices

have already been addressed in the chapters in which the requirements are described. Some commenters asked that FTA be consistent between what is described in the chapter and what is provided in the appendices; we have taken a very careful look and made sure that the information is consistent. A couple of commenters suggested that FTA include a fictitious agency's Title VI Program in the appendix; we have included examples of almost every item in a Title VI Program, and we believe the information we have provided should be very beneficial to recipients as they put their Title VI Programs together.

To begin, in Appendix A we added checklists for the elements recipients must include in their Title VI Programs. Recipients can literally "check the box" as they assemble the elements of their Title VI Program.

Appendices B, C and D contain sample procedures and forms that recipients may use as provided, or that they may modify. Appendix B contains a sample Title VI Notice to the public. Appendix C contains a sample Title VI complaint procedure, and Appendix D contains a sample Title VI Complaint Form. All of these documents are "vital documents" for LEP purposes, and each appendix provides information about providing the information in other languages as appropriate.

Appendix E provides a sample form recipients may use for tracking transit-related Title VI investigations, lawsuits and complaints. Appendix F contains a sample table depicting the racial breakdown of the membership of various non-elected bodies, the membership of which is selected by the recipient.

Appendix G contains samples for reporting service standards (vehicle load, vehicle headway, on-time performance, service availability) and Appendix H contains samples for reporting service policies (vehicle assignment and transit amenities). For the service standards for vehicle load and vehicle headway, we have provided two methods of expressing the standard: In writing and in table format. Recipients should provide both the written description and the table when they submit the information in their Title VI Program. The service standards for on-time performance and service availability, as well as the service policies, require a written explanation only.

Appendix I provides sample demographic and service profile maps and charts. Appendix J provides information on reporting the requirement to monitor transit service.

The appendix provides tables and maps as examples of how to assess the performance of service on minority and non-minority transit routes for each of the recipient's service standards and service policies. The appendix provides sample tables and written explanations for each of the service standards and policies. These tables are examples of what recipients should submit with their Title VI Programs. Unless requested to verify the information, FTA does not need the raw data generated through the monitoring process.

Appendix K provides checklists for a major service change policy, disparate impact policy, the considerations for a service equity analysis, and considerations for a fare equity analysis. Use of these checklists will assist transit providers in ensuring they have met the requirements of analyzing major service changes and fare changes.

Appendix L provides information on the various types of recipients and the reporting requirements for each type of recipient. There are five flow charts that provide a pictorial representation of the reporting requirements. Finally, Appendix M contains the same content as Appendix D in the current Circular. This appendix provides technical assistance resources for Title VI and Limited English Proficiency.

Issued in Washington, DC, this 22nd day of August, 2012.

**Peter Rogoff,**  
*Administrator.*

[FR Doc. 2012-21167 Filed 8-27-12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### **Intent To Prepare an Environmental Impact Statement and Environmental Assessment for the I-20 East Transit Initiative in the City of Atlanta and DeKalb County, GA**

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement (EIS) and Environmental Assessment (EA).

**SUMMARY:** The Federal Transit Administration (FTA) and the Metropolitan Atlanta Rapid Transit Authority (MARTA) intend to prepare an Environmental Impact Statement (EIS) for MARTA's I-20 East Transit Initiative project, which would extend the existing east-west rail line from the Indian Creek Station to the Mall at Stonecrest in eastern DeKalb County and an Environmental Assessment (EA)

for a new Bus Rapid Transit (BRT) service along I-20 between downtown Atlanta and a new station at Wesley Chapel Road, east of I-285 in DeKalb County. The EIS and EA will be prepared in accordance with the National Environmental Policy Act (NEPA), provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), and will also address the requirements of other federal and state environmental laws. The extension of the existing MARTA east-west rail line and the new BRT service along I-20 were selected as the Locally Preferred Alternative (LPA) based on a two year Detailed Corridor Analysis (DCA) completed in April 2012. The DCA revisited the analysis and conclusions of the I-20 East Corridor Study Alternatives Analysis (AA) completed in 2004 and complied with FTA's New Starts project development process.

The purpose of this Notice of Intent (NOI) is to advise interested agencies and the public regarding the plan to prepare the EIS and EA, to provide information on the nature of the proposed transit project, to invite participation in the NEPA process, including comments on the scope of the EIS and EA proposed in this notice, and to announce where and when public scoping meetings will be conducted. Scoping meetings are an opportunity for government agencies, affected stakeholders, and the general public to provide input and feedback on the project Purpose and Need, the alternatives to be studied, as well as to identify any significant physical, cultural, natural, and social environmental issues within the study area.

**DATES:** *Comment Due Date:* Written comments on the scope of the EIS and EA must be sent to Janide Sidifall, Project Manager, MARTA by October 15, 2012.

*Scoping Meetings:* Public scoping meetings will be held on September 10, 11, and 13 at locations within the study area. These meetings will be the fourth round of public outreach meetings held for the I-20 East Transit Initiative, and are an opportunity for MARTA to present the I-20 East LPA to the public. The times and locations of these meetings are indicated under **ADDRESSES** below. Interagency scoping meetings will be held in September, 2012.

**ADDRESSES:** *Written Comments:* Written comments on the scope of the EIS and EA, including the project's Purpose and Need, the impacts to be evaluated, and methodologies to be used in the

evaluations, must be sent to Janide Sidifall, Project Manager, MARTA, 2424 Piedmont Road NE., Atlanta, GA 30324-3330. Comments may also be offered at the public scoping meetings. Written comments should be submitted within two weeks of the final scoping meeting or 30 days within the publication of the final NOI, whichever is later.

*Scoping Meetings:* The dates, times, and locations for the public scoping meetings are:

*Meeting 1:* Monday, September 10, 2012, 6:00 p.m.–8:00 p.m., Trees Atlanta 225 Chester Avenue, Atlanta, GA 30316

*Meeting 2:* Tuesday, September 11, 2012, 6:00 p.m.–8:00 p.m., Porter Sanford III Performing Arts Center, 3181 Rainbow Drive, Decatur, Georgia 30034

*Meeting 3:* Thursday, September 13, 2012, 6:00 p.m.–8:00 p.m., Lou Walker Senior Center, 2538 Panola Road, Lithonia, GA 30058

The appropriate federal, state, and local agencies will be notified individually about the time and location of the interagency scoping meeting.

The locations of the public scoping meetings are accessible to persons with disabilities. If translation, signing services, or other special accommodations are needed, please contact Jen Price at (404) 377-9147 or for hearing impaired TTY 404-848-5665 at least 48 hours before the meeting. A scoping information booklet will be available one week prior to the meetings on the project web site at: <http://www.itsmarta.com/120-east-corr.aspx>. Copies will also be available at the scoping meetings.

**FOR FURTHER INFORMATION CONTACT:**

Brian C. Smart, Environmental Protection Specialist, Federal Transit Administration—Region IV, 230 Peachtree Street, NW—Suite 800, Atlanta, GA 30303, Telephone: (404) 865-5607; Facsimile: (404) 865-5490; Email: [brian.smart@dot.gov](mailto:brian.smart@dot.gov); or Janide Sidifall, Office of Transit Systems Planning, MARTA, 2424 Piedmont Road, NE, Atlanta, GA 30324-3330, Telephone: (404) 848-5828; Facsimile (404) 848-5132; Email: [jsidifall@itsmarta.com](mailto:jsidifall@itsmarta.com).

**SUPPLEMENTARY INFORMATION:**

**Scoping**

FTA and MARTA will undertake a scoping process that will allow the public and interested agencies to comment on the scope of the environmental review process. Scoping is the process of determining the scope, focus, and content of the EIS and EA. NEPA scoping has specific objectives, identifying the significant issues that will be examined in detail during the

EIS and EA, while simultaneously limiting consideration and development of issues that are not truly significant. FTA and MARTA invite all interested individuals and organizations, public agencies, and Native American tribes to comment on the scope of the EIS and EA. To facilitate public and agency comment, a Scoping Information Packet will be prepared for review. Included in this packet will be descriptions of: the Purpose and Need for the project; the alternatives to be studied; the impacts to be assessed; and the draft public outreach and agency coordination plan.

**Description of Proposed Projects and Study Areas**

The first phase of the I-20 East Transit Initiative was a two year long DCA. This DCA built upon the transit studies previously completed in the corridor and conformed with FTA's New Starts project development process. The DCA identified and evaluated transit improvements in the I-20 East Corridor from downtown Atlanta to the Mall at Stonecrest, in eastern DeKalb County. The result of the DCA was an LPA which includes the extension of the existing east-west heavy rail transit (HRT) line from the Indian Creek Station to the Mall at Stonecrest in eastern DeKalb County and a new BRT service along I-20 between downtown Atlanta and a new station at Wesley Chapel Road, east of I-285 in DeKalb County.

The EIS, which will focus on the HRT extension, has a study area that extends from the MARTA Indian Creek Station south for 3.5 miles along I-285, then east for approximately 8.5 miles to the Mall at Stonecrest. The EA, which will focus on the new BRT service, has a study area that extends from the MARTA Five Points Station in downtown Atlanta, south along surface streets to I-20, then east along I-20 for approximately 11.5 miles to Wesley Chapel Road in DeKalb County. Both study areas will extend up to ½ mile on each side of the alignment in order to evaluate the direct, indirect, and cumulative impacts associated with the implementation of transit in the corridor.

**Project Purpose and Need**

The purpose of the proposed project is to enhance east-west mobility and improve transit accessibility to residential areas and employment centers within the corridor. The existing and future roadway congestion in the I-20 East corridor will have an increasingly detrimental effect on automobile and bus transit travel in the corridor. The proposed transit

investments are intended to improve travel times and travel reliability by providing a rapid transit service for commuters traveling to and from central Atlanta.

The need for the proposed project is based on the following considerations of the I-20 East Corridor. There is a need for improved mobility and accessibility in the corridor, as traffic congestion causes delay and slow travel times and there is inadequate access to downtown Atlanta and other employment centers; there is a need for additional travel options in the corridor, which has limited east-west roadways, making I-20 the primary choice for east-west travel in the corridor, and only a limited number of roadway transportation projects or capacity improvements are planned in the corridor to accommodate growth; there is a need for improved transit service in the corridor, which is insufficient for a growing demand, as it consists primarily of local and express buses operating in normal traffic, and which provides limited transportation options for traditionally underserved populations such as minority, low income, transit dependent, and elderly populations; and finally, there is a need to support land use and land and economic development goals within the corridor, areas of which are in need of revitalization.

**Study Alternatives**

MARTA recently completed a two year long DCA that evaluated potential alignments and transit technologies for transit improvements in the I-20 East Corridor. From multiple alignment and transit technology alternatives, an LPA was selected and adopted by the MARTA Board of Directors in April 2012. The EIS and EA will evaluate vertical and horizontal alternatives of the adopted LPA as well as a No-Build alternative. These LPA and No-Build alternatives are described as follows:

1. No Build Alternative: This alternative reflects the existing transportation system plus any committed transportation projects. This alternative does not include a major transit investment in the I-20 East Corridor as proposed in the LPA. The No Build Alternative includes only existing or committed MARTA and GRTA local and express bus service in the corridor and any other transportation investment included in the Atlanta Regional Commission's (ARC) long-range transportation plan. ARC is the Metropolitan Planning Organization (MPO) for the Atlanta urbanized area. NEPA requires the consideration of a No Build Alternative as a means of comparing and evaluating

the impacts and benefits of the Build Alternative.

2. Locally Preferred Alternative (LPA): The LPA, as adopted by the MARTA Board of Directors, includes two projects:

a. (1) The extension of the existing east-west heavy rail transit (HRT) line from the Indian Creek Station to the Mall at Stonecrest in southeast DeKalb County and

b. (2) New BRT service along I-20 between downtown Atlanta and a new BRT station at Wesley Chapel Road, east of I-285 in DeKalb County. While the HRT and BRT portions of the LPA both address the need for improved mobility and transit service in the I-20 East Corridor, they represent significantly different transit investments and modes.

For this reason, the HRT extension will be evaluated as the Build Alternative in the EIS and the BRT service will be evaluated as the Build Alternative in the EA. However, since the adopted LPA is a combination of both HRT and BRT, the EIS and EA will be undertaken concurrently with all public outreach presenting information and analysis for both.

The Build Alternative to be evaluated in the EIS is the extension of the existing MARTA east-west HRT line from the Indian Creek Station, south parallel to I-285, then east parallel to I-20 to the Mall at Stonecrest in eastern DeKalb County. The HRT service would include new stations at Covington Highway, Wesley Chapel Road, Panola Road, Lithonia Industrial Blvd., and the Mall at Stonecrest. The HRT alignment would generally be located adjacent to the interstate and would utilize Georgia Department of Transportation (GDOT) right-of-way wherever possible.

The Build Alternative to be evaluated in the EA is a new BRT service between downtown Atlanta and Wesley Chapel Road, operating in HOV lanes on I-20 as much as possible and utilizing surface streets within downtown Atlanta. The BRT service would be a fixed-route, branded, high frequency, all day service utilizing transit stations rather than typical bus stops. From east to west, the BRT service would start at the proposed Wesley Chapel Road HRT/BRT station and utilize the HOV lanes and transit/HOV interchanges to access stations at Candler Road and Gresham Road, then serve stations at Glenwood Avenue, Moreland Avenue, and Bill Kennedy Way/Atlanta BeltLine before terminating at the Five Points Station in downtown Atlanta. The service would utilize arterial BRT enhancements such as Transit Signal Priority (TSP) and queue jumper lanes to maximize the

efficiency of surface street operations where necessary.

#### Scope of Environmental Analysis

FTA and MARTA will evaluate both project-specific and secondary and cumulative effects to the physical, cultural, natural, and social environment in the I-20 East Corridor. The permanent, long-term effects to the region could include effects to traffic and transportation; land use and socioeconomics; visual character and aesthetics; noise and vibration; historical and archaeological resources; community impacts; and natural resources. Temporary impacts during construction of the project could include effects to air quality; noise and vibration; natural resources; and contaminated and hazardous materials.

In accordance with 23 CFR 771.105 (a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the Council on Environmental Quality, FTA implementing NEPA (40 CFR parts 1500-1508 and 23 CFR Part 771), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), and Section 404 (B) (1) guidelines of EPA (40 CFR part 230), the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR part 800) and Section 4(f) of the Department of Transportation Act (23 CFR 771.135)), the regulation implementing Section 7 of the Endangered Species Act (50 CFR part 402) Executive Orders 12898 regarding minority and low-income populations, 11988 on floodplain management, and 11990 on wetlands, the Clean Water Act and the Clean Air Act of 1970, along with other applicable Federal and State regulations. Opportunities for comment on the potential effects to be studied will be provided to the public, and comments received will be considered in the development of the final scope and content of the environmental documents.

#### Procedures

The regulations implementing NEPA, as well as provisions of SAFETEA-LU, call for public involvement in the NEPA process. In accordance with Section 6002 of SAFETEA-LU, FTA and MARTA will: (1) Extend an invitation to other Federal and non-Federal agencies and Native American Tribes that may

have an interest in the proposed project to become "participating agencies" (any interested party that does not receive an invitation to become a participating agency can notify any of the contact persons listed earlier in this NOI); (2) Provide opportunity for involvement by participating agencies and the public to help define the Purpose and Need for the proposed project, as well as the range of alternatives for consideration in the EIS and EA; and (3) Establish a plan for coordinating public and agency participation in, and comment on, the environmental review process.

It is possible that we may not be able to identify all Federal and non-federal agencies and Indian tribes that may have an interest in the proposed project. Any Federal or non-Federal agency or Indian tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A Public Involvement Plan and an Agency Coordination Plan will be developed outlining public and agency involvement for the project. These will be available on the project Web site or through written request. Opportunities for comment will be provided throughout the NEPA process, including public and agency meetings, the project Web site <http://www.itsmarta.com/120-east-corr.aspx>, a mailing address (identified above under **ADDRESSES**), and project newsletters. Comments received from any of these sources will be considered in the development of the final scope and content of the environmental documents.

With the publication of this NOI, the scoping process for the project begins. After the publication of the Draft Scoping Document, a public comment period will begin, allowing the public to offer input on the scope of the EIS and EA until October 15, 2012. Public comments will be received through those methods explained earlier in this NOI and will be incorporated into a Final Scoping Document. This document will detail the scope of the EIS and EA as well as the potential environmental effects that will be considered during the study period. After the completion of the Draft EIS and EA, another public commenting period will allow for input on the EIS and EA, and these comments will be incorporated into the Final EIS and EA/ Finding of No Significant Impact (FONSI) reports before publication.

FTA may identify a locally preferred alternative in the DEIS when made available for public and agency comments. Public hearings on the DEIS

will be held in DeKalb County. On the basis of the DEIS and the public and agency comments received, FTA will identify the locally preferred alternative in the FEIS. The FEIS will serve as the basis for Federal and State environmental findings and determinations needed to conclude the environmental review process.

Issued on: August 15, 2012.

**Yvette G. Taylor,**

*Regional Administrator.*

[FR Doc. 2012-21222 Filed 8-27-12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### FY 2012 Discretionary Funding Opportunity: Paul S. Sarbanes Transit in Parks Program

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of Availability; Solicitation of Project Proposals

**SUMMARY:** The Federal Transit Administration (FTA) announces the availability of approximately \$12 million in Paul S. Sarbanes Transit in Parks Program (Transit in Parks Program) discretionary funds in Fiscal Year (FY) 2012. FTA announced the allocation of \$13.5 million in FY 2012 Transit in Parks Program funds in the **Federal Register** on February 3, 2012. This notice solicits proposals to compete for program funds that have been appropriated since that date and may include additional funds made available after this notice is published.

The Transit in Parks Program was established by Section 3021 of SAFETEA-LU, as amended (49 U.S.C. 5320), and was repealed, effective October 1, 2012, by the most recent transportation authorization, Moving Ahead for Progress in the 21st Century (MAP-21). This announcement solicits proposals for the final allocation of program funding, as defined above. The program is administered by FTA in partnership with the Department of the Interior and the U.S. Department of Agriculture's Forest Service.

The Transit in Parks Program funds capital and planning expenses for alternative transportation systems such as buses, trams and non-motorized trails in federally managed parks and public lands. Federal land management agencies, as well as State, tribal and local governments, acting with the consent of a Federal land management agency, are eligible to apply. DOI, after consultation with and in cooperation

with FTA, will determine the final selection and funding of projects. Geographic diversity will be considered when allocating funds.

This announcement is available on the FTA Web site at: <http://www.fta.dot.gov>. FTA will announce final selections on the Web site and in the **Federal Register**. A synopsis of this funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at <http://www.grants.gov>.

**DATES:** Complete proposals must be received by 11:59 p.m. EDT on Friday, September 28, 2012.

**ADDRESSES:** Project proposals originating from State, Tribal or local government entities must be submitted electronically through the GRANTS.GOV Web site. Project proposals originating from units of Federal land management agencies must be submitted directly to their agency points of contact, as listed at the end of this notice, or to specific regional agency coordinators as directed by each agency. Federal land management agency units may propose projects in cooperation with other eligible funding recipients, including projects where an eligible partner is the intended funding recipient.

Applicants required to use GRANTS.GOV must be properly registered prior to submitting an application, and should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the deadline for submission. GRANTS.GOV applicants should receive two confirmation emails. The first will confirm that the application was received and a subsequent email will be sent within 24-48 hours indicating whether the application was validated or rejected by the system. If interested parties experience difficulties at any point during the registration or application process, please call the GRANTS.GOV Customer Support Hotline at 1-800-518-4726, Monday-Friday from 7 a.m. to 9 p.m. EST. The required electronic project proposal template as well as guidance on completing a proposal can be found on GRANTS.GOV or on the program Web site at <http://www.fta.dot.gov/transitinparks>.

**FOR FURTHER INFORMATION CONTACT:** The appropriate FTA Regional Office ([http://fta.dot.gov/12317\\_1119.html](http://fta.dot.gov/12317_1119.html)) or the appropriate land management agency (Appendix A) for proposal-specific information. For general program information, contact Adam Schildge, Paul S. Sarbanes Transit in

Parks Program, at (202) 366-0778, [Adam.Schildge@dot.gov](mailto:Adam.Schildge@dot.gov). A TDD is available at 1-800-877-8339 (TDD/FIRS). For technical assistance or general inquiries regarding alternative transportation in federal lands, contact the Transit in Parks Technical Assistance Center at <http://www.triptac.org>, (877) 704-5292, or [helpdesk@triptac.org](mailto:helpdesk@triptac.org).

#### SUPPLEMENTARY INFORMATION

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##### I. Overview

Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users of 2005 (SAFETEA-LU), as amended, established the Paul S. Sarbanes Transit in Parks Program (Transit in Parks Program) (49 U.S.C. 5320). On July 7, 2012, Moving Ahead for Progress in the 21st Century (MAP-21) was enacted, repealing the Transit in Parks Program effective on October 1, 2012. This notice solicits project proposals for the allocation of approximately \$12 million in remaining program funding. The program is administered by the Federal Transit Administration (FTA) in partnership with the Department of the Interior (DOI) and the U.S. Department of Agriculture's Forest Service.

Congestion in and around our national parks and public lands causes traffic delays, creates pollution, and can detract from the visitor experience and the protection of sensitive natural and cultural resources. Since 2006, the Transit in Parks Program has allocated approximately \$160 million to competitively selected alternative transportation projects that provide improved mobility and accessibility within our public lands, reduce the environmental impacts of automobile traffic congestion, improve the safety and recreational experience of visitors, and provide sustainable and cost-efficient solutions for transportation challenges on our nation's parks, refuges, forests and other public lands. As with other types of transportation infrastructure, alternative transportation systems on public lands require continued capital investment. In addition, planning studies funded

through this program have identified new opportunities for alternative transportation projects to provide an effective response to these challenges.

## II. Program Purpose

The purpose of the program is to provide for the capital and planning costs of alternative transportation systems that will enhance the protection of national parks and Federal lands; increase the enjoyment of visitors' experience by conserving natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access to all, including persons with disabilities.

Since this is the final competition for funding under this program, FTA anticipates prioritizing projects that will be of independent utility and will not require future sources of funding to complete. Additionally, FTA anticipates prioritizing projects that are ready to begin implementation and can be completed within a reasonable timeframe.

## III. Program Information

### A. Eligible Applicants

Eligible applicants are (1) Federal land management agencies that own or manage a park, refuge or recreational area that is open to the public, including but not limited to units of the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, the U.S. Forest Service, and the Bureau of Reclamation; and (2) State, tribal and local governments with jurisdiction over land in the vicinity of an eligible area, as defined above, acting with the consent of a Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non-governmental participant. **Note:** If the applicant is a State, tribal, or local government, a letter from the affected unit(s) of the Federal land management agency or agencies expressing support for the project must be submitted with the project proposal in order to indicate consent. Applications without support letters from the relevant Federal land management agency or agencies unit(s) will be deemed ineligible. Non-profit organizations are not eligible recipients of funding under this program, but may partner with an eligible applicant as defined above.

### B. Eligible Projects

SAFETEA-LU defines alternative transportation as "transportation by bus,

rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service. Such term also includes a non-motorized transportation system (including the provision of facilities for pedestrians, bicycles, and non-motorized watercraft)."

The program funds capital and planning expenses for alternative transportation systems in, and in the vicinity of, federally owned or managed parks and public lands. A qualified planning or capital project must be within the vicinity of a federally owned or managed park, refuge, or recreational area open to the general public and must meet the goals of the program. The costs of operating and maintaining an alternative transportation system are not eligible under the program. A project proposal may include in its budget up to 15 percent for project administration, contingency, and oversight. As specified in 49 U.S.C. 5320(b)(5), the following types of projects are eligible:

#### 1. Planning

Activities to comply with metropolitan and statewide planning provisions (49 U.S.C. 5320(b)(5)(A) referencing 49 U.S.C. 5303, 5304, 5305). Activities include planning studies for an alternative transportation system including evaluation of no-build and all other reasonable alternatives, traffic studies, visitor utilization studies, transportation analysis, feasibility studies, and environmental studies. Because this is the final allocation of funding under this program, planning proposals must demonstrate independent utility, and projected benefits should not be dependent upon the availability of future funding.

#### 2. Capital

Eligible capital projects include all aspects of "acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing."

Capital projects may include projects operated by an outside entity, such as a public transportation agency, state or local government, private company engaged in public transportation, or

private non-profit organization; and, projects may also include the deployment/commercialization of alternative transportation vehicles that introduce innovative technologies or methods.

The capital cost of leasing vehicles is an eligible expense under the program. For vehicle acquisition projects, sponsors should compare the cost-effectiveness of leasing versus purchasing vehicles. Leasing may be particularly cost-effective in circumstances in which transit service is only needed during a peak visitation period that lasts only a few months. In these cases, leasing a vehicle for a few months during the year may be less expensive than purchasing a vehicle only used for a few months during the year. An award can cover the capital cost of leasing vehicles but may not cover the cost of operations, such as fuel or operator salaries.

Project sponsors should also compare the cost effectiveness of providing service versus contracting for service. The capital portion of contracted service is an eligible capital expense under the program. For example, if a public land agency contracts with a private bus company to provide shuttle service with privately owned buses, the portion of the contract that covers the capital expense of the buses is an eligible expense under the Transit in Parks Program. Operating expenses are not eligible under the program. Project sponsors should compare the cost-effectiveness of their preferred option to other alternatives in the financial sustainability portion of the proposal.

#### 3. "Fixed Guideway" and Bus Projects

Fixed guideway projects are eligible for funding through this program. They are defined as transportation projects that run on a dedicated right-of-way, such as a light rail, trolley, bus rapid transit, or any type of ferry system. Eligible projects can include the development of a new fixed guideway project; rehabilitation or modernization of existing fixed guideway systems; and expansion of existing systems. For bus or shuttle projects, eligible projects can include purchase of buses and related equipment; replacement of buses and related equipment; rehabilitation of buses and related equipment; construction of bus-related facilities such as bus shelters; and purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on August 10, 2005, with clean fuel vehicles.

#### 4. Other Eligible Projects

The Transit in Parks Program specifically includes these other eligible capital projects:

i. The capital costs of coordinating Federal land management agency public transportation systems with other public transportation systems.

ii. Non-motorized transportation systems (including the provision of facilities for pedestrians, bicycles and non-motorized watercraft).

iii. Water-borne access systems within or in the vicinity of an eligible area as appropriate and consistent with 49 U.S.C. 5320.

iv. Any other alternative transportation project that enhances the environment; prevents or mitigates an adverse impact on a natural resource; improves Federal land management agency resource management; improves visitor mobility and accessibility and the visitor experience; reduces congestion and pollution (including noise pollution and visual pollution); or conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility). This includes the enhancement or extension of qualifying alternative transportation systems, including the development of related intelligent transportation systems (ITS).

In order to be considered for funding a project must consist of one or more of the eligible activities listed above, meet the definition of alternative transportation, and contribute to the goals of the program. Technical assistance relating to planning and implementing eligible alternative transportation systems is available from the Paul S. Sarbanes Transit in Parks Technical Assistance Center (<http://www.triptac.org>).

#### C. Financial Limitations and Cost Sharing

No one project may receive more than 25 percent of the available funds. Based on the combined availability of \$26.9 million in Transit in Parks funds for FY 2012, the statutory maximum is \$6.7 million. Based on the limited amount of funding available under this notice, FTA may apply a maximum award ceiling of \$2 million. Projects selected for funding may receive up to a 100 percent Federal share.

#### D. Application Content

The required electronic project proposal template can be found on GRANTS.GOV and on the program Web site at <http://www.fta.dot.gov/transitinparks>. Applications must

follow the guidelines posted in the proposal template instructions. Narrative responses may not exceed the word limits noted in the application instructions. Applications that exceed these limits may not be reviewed.

In addition to the proposal template, applicants should submit an engineering cost estimate, or an otherwise detailed budget, and a project timeline that indicates projected start and completion dates. These documents may be submitted as separate attachments. Letters of support, photos, graphics and other non-narrative materials may also be submitted.

#### E. Evaluation Criteria

Proposed capital projects will be evaluated based on the following criteria:

1. Demonstration of Need, including:
  - i. Visitor mobility and experience (current or anticipated problem); and
  - ii. Environmental (current or anticipated problem).
2. Visitor Mobility and Experience Benefits of Project, including:
  - i. Reduced traffic congestion;
  - ii. Enhanced visitor mobility, accessibility, and safety; and
  - iii. Improved visitor education, recreation, and health benefits.
3. Environmental Benefits of Project, including:
  - i. Protection of sensitive natural, cultural, and historic resources; and
  - ii. Reduced pollution (air, noise, visual).
4. Financial Sustainability and Operational Efficiency, including:
  - i. Effectiveness in improving transportation system operations and efficiency;
  - ii. Realistic and financially-sustainable financial plan;
  - iii. Cost effectiveness; and
  - iv. Partnering, funding from other sources, innovative financing.

Proposed planning projects will be evaluated based on the following criteria:

1. Demonstration of Need, including:
  - i. Visitor mobility and experience (current or anticipated problem); and
  - ii. Environmental (current or anticipated problem).
2. Proposed Planning Methodology Relating to Visitor Mobility and Experience, including:
  - i. Reduced traffic congestion;
  - ii. Enhanced visitor mobility, accessibility, and safety; and
  - iii. Improved visitor education, recreation, and health benefits.
3. Proposed Planning Methodology Relating to Environmental Protection, including:

- i. Protection of sensitive natural, cultural, and historical Resources; and
- ii. Reduced pollution (air, noise, visual).

#### 4. Proposed Planning Methodology Relating to Operational Efficiency and Financial Sustainability, including:

- i. Effectiveness in improving transportation system operations and efficiency;
- ii. Realistic and financially-sustainable financial plan;
- iii. Cost effectiveness; and
- iv. Partnering, funding from other sources.

Applicants that have previously received funding through this program must be current in submitting their quarterly and annual reports to FTA to be considered for funding under this program.

A special note on non-motorized transportation systems: While non-motorized systems, such as trails, are eligible under the program, not all non-motorized systems will meet the goals of the program needed to be considered for funding. Like motorized systems, in order to be considered for funding, non-motorized systems must reduce or mitigate the number of auto trips by providing an alternative to travel by private auto. In addition, non-motorized systems must provide a high degree of connectivity within a transportation system. Finally, they should improve safety for motorized and non-motorized transportation system users.

#### IV. Technical Assistance and Other Program Information

Complete applications must be submitted via GRANTS.GOV by September 28, 2012. Additional program information is available at <http://www.fta.dot.gov/transitinparks>. Projects selected for funding will be required to report quarterly and submit performance data to FTA through the appropriate agency. Detailed information on reporting will be included in the **Federal Register** notice announcing projects selected for funding. Technical assistance regarding the program is available by contacting Adam Schildge, Federal Transit Administration, (202)366-0778, [adam.schildge@dot.gov](mailto:adam.schildge@dot.gov) or the appropriate Federal Land Management Agency contact (see Appendix C). For technical assistance or general inquiries regarding alternative transportation in federal lands, please contact the Transit in Parks Technical Assistance Center at [www.triptac.org](http://www.triptac.org), (877) 704-5292, or [helpdesk@triptac.org](mailto:helpdesk@triptac.org).

Issued in Washington, DC, this 23rd day of August, 2012.

**Peter Rogoff,**  
Administrator.

## Appendix A—Federal Land Management Agencies

### Transit in Parks Program Contacts

- **National Park Service:** Jim Evans, [Jim\\_Evans@nps.gov](mailto:Jim_Evans@nps.gov); telephone: 202-513-7021, fax: 202-371-6675, mail: 1201 Eye Street NW, 10th Floor; Washington, DC 20005.
- **Fish and Wildlife Service:** Nathan Caldwell, [Nathan\\_Caldwell@fws.gov](mailto:Nathan_Caldwell@fws.gov), telephone: 703-358-2205, fax: 703-358-2517, mail: 4401 N. Fairfax Drive, Room 634; Arlington, VA 22203.
- **Forest Service:** Rosana Barkawi, [rosanabarkawi@fs.fed.us](mailto:rosanabarkawi@fs.fed.us), telephone: (703) 605-4509, mail: 1621 N Kent Street, Room 900, Arlington, VA 22209.
- **Bureau of Land Management:** Victor F. Montoya, [Victor\\_Montoya@blm.gov](mailto:Victor_Montoya@blm.gov), telephone: 202-912-7041, mail: 1620 L Street, WO-854, Washington, DC 20036.

[FR Doc. 2012-21220 Filed 8-27-12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2012-0029]

#### Notice of Request To Rescind Buy America Waiver for Minivans and Minivan Chassis; Extension of Comment Period

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** Chrysler Group LLC has requested that the comment period be extended for thirty (30) days, until October 4, 2012, on the Vehicle Production Group LLC's (VPG) request for the Federal Transit Administration (FTA) to rescind the Buy America non-availability waiver it issued on June 21, 2010, for minivans and minivan chassis. FTA disagrees that a 30-day extension is necessary to adequately provide comments on VPG's request. However, in order to ensure that FTA obtains a comprehensive and in-depth understanding of a potential rescission of this Buy America waiver and its effects, which necessarily involves input from all interested and affected parties, FTA is extending the comment period until September 11, 2012.

**DATES:** Comments must be received by September 11, 2012. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments by any of the methods identified in FTA's August 3, 2012 **Federal Register** notice (77 FR 46556).

#### FOR FURTHER INFORMATION CONTACT:

Mary J. Lee, FTA Attorney-Advisor, at (202) 366-0985 or [mary.j.lee@dot.gov](mailto:mary.j.lee@dot.gov).

**SUPPLEMENTARY INFORMATION:** On August 3, 2012, FTA published a notice in the **Federal Register** (77 FR 46556) requesting comments on whether the Federal Transit Administration (FTA) should rescind the non-availability waiver exempting minivans and minivan chassis from the Buy America final assembly requirements outlined in 49 CFR part 661 that FTA issued on June 21, 2010 (75 FR 35123). The Vehicle Production Group LLC (VPG) has asked FTA to rescind this waiver. VPG manufactures the MV-1, a minivan assembled by AM General LLC (AM General) at AM General's plant in Mishawaka, Indiana. VPG certifies that its MV-1 complies with the Buy America requirements for both domestic content and final assembly.

Chrysler Group LLC (Chrysler) has requested that FTA extend the comment period by thirty (30) days, until October 4, 2012. FTA will extend the comment period until September 11, 2012. FTA disagrees that a 30-day extension period is necessary in order for Chrysler or any other interested party to comment on VPG's request to rescind the Buy America waiver for minivans and minivan chassis. However, because of the need to obtain and understand completely the facts surrounding this request and to ensure that all interested parties comment on this significant matter, FTA is extending the comment period until September 11, 2012.

Issued on August 23, 2012.

**Dana C. Nifosi,**

Deputy Chief Counsel.

[FR Doc. 2012-21270 Filed 8-27-12; 8:45 am]

**BILLING CODE 4910-57-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

August 23, 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 September 27, 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 the (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](mailto:OIRA_Submission@OMB.EOP.GOV) and the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

#### FOR FURTHER INFORMATION CONTACT:

Copies of the submission(s) may be obtained by calling (202) 927-5331, email at [PRA@treasury.gov](mailto:PRA@treasury.gov), or the entire information collection request may be found at [www.reginfo.gov](http://www.reginfo.gov).

#### Financial Management Service (FMS)

*OMB Number:* 1510-0013.

*Type of Review:* Revision of a currently approved collection.

*Title:* States Where Licensed for Surety.

*Form:* FMS 2208.

*Abstract:* Information collected from insurance companies provides Federal bond approving officers with a listing of states, by company, in which they are licensed to write Federal bonds. This information appears in Treasury's Circular 570.

*Affected Public:* Private sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 262.

*OMB Number:* 1510-0067.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement.

*Form:* FMS 5902, 5903.

*Abstract:* These forms are used to give authority to financial institutions to become a depositary of the Federal Government. They also execute an agreement from the financial institutions they are authorized to pledge collateral to secure public funds with Federal Reserve Banks or their designees.

*Affected Public:* Private sector; businesses or other for-profits.

*Estimated Total Burden Hours:* 8.

*OMB Number:* 1510-0073.

*Type of Review:* Revision of a currently approved collection.

*Title:* ETA Financial Agency Agreement.

*Form:* FMS 111.

*Abstract:* This application will collect a financial institution's identify

identifying information, confirm a financial institution's commitment to offering the ETA, identify a point of contact for the ETA Program and determine date when institutions will offer ETAs.

*Affected Public:* Private sector; businesses or other for-profits.

*Estimated Total Burden Hours:* 40.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012-21187 Filed 8-27-12; 8:45 am]

**BILLING CODE 4810-35-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

[OCC Charter Number 713558]

#### HomeTrust Bank, Clyde, North Carolina; Approval of Conversion Application

Notice is hereby given that on May 14, 2012, the Office of the Comptroller of the Currency (OCC) approved the application of HomeTrust Bank, Clyde, North Carolina to convert to the stock form of organization. Copies of the application are available for inspection. You may personally inspect and photocopy the application at the OCC, 250 E Street SW., Washington, DC 20219. 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 to submit to security screening in order to inspect and photocopy the application. The application may also be inspected at the OCC Northeast District Licensing Office, 340 Madison Avenue, Fifth Floor, New York, New York 10173-0002. You may do so by calling (212) 790-4055.

Dated: August 21, 2012.

By the Office of the Comptroller of the Currency.

**Stephen A. Lybarger,**

*Deputy Comptroller for Licensing.*

[FR Doc. 2012-21201 Filed 8-27-12; 8:45 am]

**BILLING CODE 4810-33-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

[OCC Charter Number 701904]

#### Hamilton Bank, Baltimore, Maryland; Approval of Conversion Application

Notice is hereby given that on August 13, 2012, the Office of the Comptroller of the Currency (OCC) approved the application of Hamilton Bank, Baltimore, Maryland to convert to the stock form of organization. Copies of the application are available for inspection. You may personally inspect and photocopy the application at the OCC, 250 E Street SW., Washington, DC 20219. 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 to submit to security screening in order to inspect and photocopy the application. The application may also be inspected at the OCC Northeast District Licensing Office, 340 Madison Avenue, Fifth Floor, New York, New York 10173-0002. You may do so by calling (212) 790-4055.

Dated: August 21, 2012.

By the Office of the Comptroller of the Currency.

**Stephen A. Lybarger,**

*Deputy Comptroller for Licensing.*

[FR Doc. 2012-21203 Filed 8-27-12; 8:45 am]

**BILLING CODE 4810-33-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Homeless Veterans, 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 Advisory Committee on Homeless Veterans will be held on September 5-7, 2012, in the Onondaga 3 Room at the Embassy Suites Hotel, 6646 Old Collamer Road South, East Syracuse, NY, from 8 a.m. to 4 p.m.

The purpose of the Committee is to provide the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless Veterans. The Committee shall assemble and review information relating to the needs of homeless Veterans and provide on-going advice on the most appropriate means of providing assistance to

homeless Veterans. The Committee will make recommendations to the Secretary regarding such activities.

On September 5, the Committee will convene in open session to receive briefings from VA and other officials on services for homeless Veterans. The Committee will also receive briefings from subject matter experts on the Committee's annual report suggestions to VA's 5 Year Plan to End Homelessness for Veterans. On September 6, the Committee will convene in closed session to protect patient privacy to conduct a site visit at the Donald J. Mitchell VA Outpatient Clinic, Griffiss Business Park, 125 Brookley Road, Building 510, Rome, NY, and to receive information on homeless Veterans programs and services in rural areas. Closing portions of the sessions are in accordance with 5 U.S.C. 552b(c)(6). On September 7, the Committee will convene in open session to discuss items for its upcoming annual report and recommendations to the Secretary.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments on issues affecting homeless Veterans for review by the Committee to Mr. Pete Dougherty, Designated Federal Officer, Homeless Veterans Initiative Office (075D), Department of Veterans Affairs, 1722 Eye Street NW., Washington, DC 20006, or email to [pete.dougherty@va.gov](mailto:pete.dougherty@va.gov). Any member of the public wishing to attend the meeting or wishing additional information should contact Mr. Dougherty at (202) 461-1857.

Dated: August 23, 2012.

By Direction of the Secretary.

**Vivian Drake,**

*Committee Management Officer.*

[FR Doc. 2012-21152 Filed 8-27-12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Advisory Committee on Former Prisoners of War (FPOW) has scheduled a meeting on September 10-12, 2012, at the Washington DC Veterans Affairs Medical Center, 50 Irving Street NW., Washington, DC. The meeting will be held from 9 a.m. to 4 p.m. on September 10 and 11 and from 9 a.m. to 1 p.m. on September 12.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the needs of such Veterans for compensation, health care, and rehabilitation.

In the morning of September 10, the Committee will convene an open session to hear from its Chairman and receive briefings by the Director of the Robert E. Mitchell Center and the Service Center Manager of the Baltimore VA Regional Office. In the afternoon, the Committee will convene a closed session to in order to protect patient privacy as the Committee tours the VA Medical Center. Closing portion of this

session is in accordance with 5 U.S.C. 552b(c)(6). On September 11, the Committee will convene an open session to receive briefings from its Chairman, the Employee Education System, and the Benefits Assistance Service. The Committee will also host a public forum and panel to gain information on FPOW issues and recommendations for health benefits and claims processing. In the afternoon, the Committee will receive briefings by the Veterans Health Benefits staff on the Mental Health Disaster Response and Post Deployment Activities. On September 12, the Committee will meet in open session to discuss its 2011/2012 recommendations and draft its report.

Individuals who wish to speak at the public forum are invited to submit a 1

to 2 page summary of their comments at the end of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Ms. Pam Burd, Program Analyst, Compensation Service (212C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or by email at [pamela.burd@va.gov](mailto:pamela.burd@va.gov). Any member of the public seeking additional information should contact Ms. Burd at (202) 461-9149.

Dated: August 23, 2012.

By Direction of the Secretary.

**Vivian Drake,**

*Committee Management Officer.*

[FR Doc. 2012-21189 Filed 8-27-12; 8:45 am]

**BILLING CODE P**



# FEDERAL REGISTER

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Part II

## Commodity Futures Trading Commission

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Proposed Order and Request for Comment on a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act; Notice

## COMMODITY FUTURES TRADING COMMISSION

### Proposed Order and Request for Comment on a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of Proposed Order and Request for Comment.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) is requesting comment on a proposed exemption (the “Proposed Exemption”) issued in response to a consolidated petition (“Petition”) <sup>1</sup> from certain regional transmission organizations (“RTOs”) and independent system operators (“ISOs”) (collectively, “Petitioners”) to exempt specified transactions from the provisions of the Commodity Exchange Act (“CEA” or “Act”) <sup>2</sup> and Commission regulations. The Proposed Exemption would exempt the contracts, agreements and transactions for the purchase or sale of the limited electricity-related products that are specifically described within the proposed order from the provisions of the CEA and Commission regulations, with the exception of sections 2(a)(1)(B), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13 of the Act and any implementing regulations promulgated thereunder including, but not limited to Commission regulations 23.410(a) and (b), 32.4 and part 180. To be eligible for the Proposed Exemption, the contract, agreement or transaction would be required to be offered or entered into in

<sup>1</sup> In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by California Independent Service Operator Corporation; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by the Electric Reliability Council of Texas, Inc.; In the matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by ISO New England Inc.; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Midwest Independent Transmission System Operator, Inc.; In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by New York Independent System Operator, Inc.; and In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by PJM Interconnection, L.L.C. (Feb. 7, 2012, as amended June 11, 2012).

<sup>2</sup> U.S.C. 1 et seq.

a market administered by a Petitioner pursuant to that Petitioner’s tariff or protocol for the purposes of allocating such Petitioner’s physical resources; the relevant tariff or protocol would be required to have been approved or permitted to have taken effect by either the Federal Energy Commission (“FERC”) or the Public Utility Commission of Texas (“PUCT”), as applicable; and the contract, agreement or transaction would be required to be entered into by persons who are “appropriate persons,” as defined in section 4(c)(3)(A) through (J) of the Act <sup>3</sup> or “eligible contract participants,” as defined in section 1a(18) of the Act and Commission regulations.<sup>4</sup> The exemption as proposed also would extend to any person or class of persons offering, entering into, rendering advice or rendering other services with respect to such transactions. Finally, the exemption would be subject to other conditions set forth therein. Authority for issuing the exemption is found in section 4(c)(6) of the Act.<sup>5</sup>

The Commission seeks comment on the Petition, the Proposed Exemption and related questions. A copy of the Petition requesting the exemption is available on the Commission’s Web site at <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/isorto4capplication.pdf>, with Petition Attachments posted at <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/isorto4cappattach.pdf> and an Order 741 Implementation Chart posted at <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/isorto4cappfercchart.pdf>.

**DATES:** Comments must be received on or before September 27, 2012.

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

- The agency’s Web site, at <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.
- **Hand Delivery/Courier:** Same as mail above.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

<sup>3</sup> 7 U.S.C. 6(c)(3)(A)–(J).

<sup>4</sup> 7 U.S.C. 1a(18). “Further Definition of ‘Swap Dealer,’ ‘Security-Based Swap Dealer,’ ‘Major Swap Participant,’ ‘Major Security-Based Swap Participant’ and ‘Eligible Contract Participant,’” 77 FR 30596, May 23, 2012.

<sup>5</sup> 7 U.S.C. 6(c)(6).

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments may 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 Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9 (17 CFR 145.9).

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from [www.cftc.gov](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 the rulemaking 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:** Robert B. Wasserman, Chief Counsel, 202–418–5092, [rwasserman@cftc.gov](mailto:rwasserman@cftc.gov), or Laura Astrada, Associate Chief Counsel, 202–418–7622, [lastrada@cftc.gov](mailto:lastrada@cftc.gov), or Jocelyn Partridge, Special Counsel, 202–418–5926, [jpartridge@cftc.gov](mailto:jpartridge@cftc.gov), Division of Clearing and Intermediary Oversight; Eve Gutman, Attorney-Advisor, 202–418–5141, [egutman@cftc.gov](mailto:egutman@cftc.gov), Division of Market Oversight; Gloria P. Clement, Assistant General Counsel, 202–418–5122, [gclement@cftc.gov](mailto:gclement@cftc.gov) or Thuy Dinh, Counsel, 202–418–5128, [tdinh@cftc.gov](mailto:tdinh@cftc.gov), Office of the General Counsel; or Robert Pease, 202–418–5863, [rpease@cftc.gov](mailto:rpease@cftc.gov), Division of Enforcement; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

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## I. The Petition

On February 7, 2012, Petitioners collectively filed a Petition with the Commission requesting that the Commission exercise its authority under section 4(c)(6) of the CEA<sup>6</sup> and section 712(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)<sup>7</sup> to exempt contracts, agreements and transactions for the purchase or sale of specified electricity products, that are offered pursuant to a FERC- or PUCT-approved tariff, from most provisions of the Act.<sup>8</sup> Petitioners include three RTOs (Midwest Independent Transmission System Operator Inc. (“MISO”); ISO New England, Inc. (“ISO NE”); and PJM Interconnection, L.L.C. (“PJM”)), and two ISOs (California Independent System Operator (“CAISO”) and New York Independent System Operator (“NYISO”)), whose central role as transmission utilities is subject to regulation by FERC; and the Electric Reliability Council of Texas, Inc. (“ERCOT”), an entity that performs the role of an ISO but whose central role as a transmission utility in the electric energy market is subject to regulation by PUCT, the authority with jurisdiction to regulate rates and charges for the sale of electric energy within the state of Texas.<sup>9</sup> Petitioners represent that the roles, responsibilities and services of ISOs and RTOs are substantially similar.<sup>10</sup> As described in greater detail below, FERC encouraged the formation of ISOs to consolidate and manage the operation of electricity transmission facilities in order to provide open, non-discriminatory transmission service for generators and transmission customers.<sup>11</sup> FERC also encouraged the

formation of RTOs to administer the transmission grid on a regional basis.<sup>12</sup>

Petitioners specifically request that the Commission exempt from most provisions of the CEA certain “financial transmission rights,” “energy transactions,” “forward capacity transactions,” and “reserve or regulation transactions,” as those terms are defined in the Petition, if such transactions are offered or entered into pursuant to a tariff under which a Petitioner operates that has been approved by FERC or PUCT, as applicable, as well as any persons (including Petitioners, their members and their market participants) offering, entering into, rendering advice, or rendering other services with respect to such transactions.<sup>13</sup> Petitioners assert that each of the transactions for which an exemption is requested is (a) subject to a long-standing, comprehensive regulatory framework for the offer and sale of such transactions established by FERC, or in the case of ERCOT, the PUCT, and (b) part of, and inextricably linked to, the organized wholesale electricity markets that are subject to regulation and oversight of FERC or PUCT, as applicable.<sup>14</sup> Petitioners expressly exclude from the Petition a request for relief from sections 4b, 4o, 6(c) and 9(a)(2) of the Act<sup>15</sup> and such provisions explicitly have been carved out of the exemption that would be provided by the Proposed Exemption. Petitioners assert that they are seeking the requested exemption in order to provide greater legal certainty with respect to the regulatory requirements that apply to the transactions that are the subject of the Petition.<sup>16</sup> Petitioners request that, due to the commonalities in the Petitioners’ markets, the exemption apply to all Petitioners and their respective market participants with respect to each category of electricity-related products described in the Petition, regardless of whether such products are offered or entered into at the current time pursuant to an individual Petitioner’s tariff.<sup>17</sup> Petitioners’ assert that this uniformity would avoid an individual Petitioner being required to seek future amendments to the exemption in order to offer or enter into the same type of transactions currently offered by another Petitioner.<sup>18</sup>

## II. Statutory background

On July 21, 2010, President Obama signed the Dodd-Frank Act. Title VII of the Dodd-Frank Act amended the CEA<sup>19</sup> and altered the scope of the Commission’s exclusive jurisdiction.<sup>20</sup> In particular, it expanded the Commission’s exclusive jurisdiction, which had included futures traded, executed and cleared on CFTC-regulated exchanges and clearinghouses, to also cover swaps traded, executed, or cleared on CFTC-regulated exchanges or clearinghouses.<sup>21</sup> As a result, the Commission’s exclusive jurisdiction now includes swaps as well as futures, and is clearly expressed in CEA section 2(a)(1)(A), which reads:

The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and subparagraphs (C), (D), and (I) of this paragraph and subsections (c) and (f), with respect to accounts, agreements (including any transaction which is of the character of \* \* \* an “option”), and transactions involving swaps or contracts of sale of a commodity for future delivery (including significant price discovery contracts) traded or executed on a contract market \* \* \* or a swap execution facility \* \* \* or any other board of trade, exchange, or market \* \* \*.<sup>22</sup>

The Dodd-Frank Act also added a savings clause that addresses the roles of the Commission, FERC, and state agencies as they relate to certain agreements, contracts, or transactions traded pursuant to the tariff of an RTO and ISO.<sup>23</sup> Toward that end, paragraph (I) of CEA section 2(a)(1) repeats the Commission’s exclusive jurisdiction and clarifies that the Commission retains its authorities over agreements, contracts or transactions traded pursuant to FERC- or state-approved tariff or rate schedules.<sup>24</sup> The same paragraph (I) also explains that the FERC and state agencies preserve their existing authorities over agreements, contracts, or transactions “entered into pursuant to a tariff or rate schedule approved by [FERC] or a State regulatory agency,” that are: “(I) not “executed, traded, or cleared on” an entity or trading facility subject to registration or “(II) executed, traded, or cleared on a registered entity

<sup>6</sup> 7 U.S.C. 6(c)(6).

<sup>7</sup> See Dodd-Frank 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>.

<sup>8</sup> See Petition at 2–3, 6.

<sup>9</sup> See Petition at 2–4. See 16 Tex. Admin. Code 25.1 (1998).

<sup>10</sup> See Petition at 2 n. 2.

<sup>11</sup> See FERC Order 888 Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Facilities (“FERC Order 888”), 61 FR 21540, April 24, 1996; See Petition at 2 n.2, 3.

<sup>12</sup> See Petition at 3.

<sup>13</sup> See *id.* at 2–3.

<sup>14</sup> See *id.* at 11.

<sup>15</sup> See *id.* at 3.

<sup>16</sup> See *id.* at 3, 5–6.

<sup>17</sup> See *id.* at 6.

<sup>18</sup> See *id.*

<sup>19</sup> 7 U.S.C. 1 *et seq.*

<sup>20</sup> Section 722(e) of the Dodd-Frank Act.

<sup>21</sup> See 7 U.S.C. 2(a)(1)(A). The Dodd-Frank Act also added section 2(h)(1)(A), which requires swaps to be cleared if required to be cleared and not subject to a clearing exception or exemption. See 7 U.S.C. 2(h)(1)(A).

<sup>22</sup> 7 U.S.C. 2(a)(1)(A).

<sup>23</sup> See 7 U.S.C. 2(a)(1)(I).

<sup>24</sup> See 7 U.S.C. 2(a)(1)(I)(i) and (ii).

or trading facility owned or operated by a [RTO] or [ISO].”<sup>25</sup>

While the Dodd-Frank Act sets forth a clear statement of the Commission’s exclusive jurisdiction and authorities as related to FERC and state regulatory authorities, the Dodd-Frank Act also granted the Commission specific powers to exempt certain contracts, agreements or transactions from duties otherwise required by statute or Commission regulation by adding a new section to the CEA, section 4(c)(6), that permits the Commission to exempt from its regulatory oversight, among other things, agreements, contracts, or transactions traded pursuant to an RTO or ISO tariff that has been approved or permitted to take effect by FERC or a State regulatory authority, as applicable.<sup>26</sup> The Commission’s charge, however, is not rote; the Commission must initially determine whether the exemption would be consistent with the public interest and the purposes of the CEA.<sup>27</sup>

The Commission must act “in accordance with” section 4(c)(1) and (2)

<sup>25</sup> 7 U.S.C. 2(a)(1)(I)(i)(II). The savings clause in CEA section 2(a)(1)(I) provides that:

(I)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission or a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission or a State regulatory authority and is—

(I) Not executed, traded, or cleared on a registered entity or trading facility; or

(II) Executed, traded, or cleared on a registered entity or trading facility owned or operated by a regional transmission organization or independent system operator.

(ii) In addition to the authority of the Federal Energy Regulatory Commission or a State regulatory authority described in clause (i), nothing in this subparagraph shall limit or affect—

(I) Any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i); or

(II) The jurisdiction of the Commission under subparagraph (A) with respect to an agreement, contract, or transaction that is executed, traded, or cleared on a registered entity or trading facility that is not owned or operated by a regional transmission organization or independent system operator (as defined by sections 3(27) and (28) of the Federal Power Act (16 U.S.C. 796(27), 796(28)).

In addition, Dodd-Frank Act section 722(g) (not codified in the United States Code) expressly states that FERC’s pre-existing statutory enforcement authority is not limited or affected by amendments to the CEA. Section 722(g) states:

(g) **AUTHORITY OF FERC.**—Nothing in the Wall Street Transparency and Accountability Act of 2010 or the amendments to the Commodity Exchange Act made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to section 222 of the Federal Power Act and section 4A of the Natural Gas Act that existed prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

<sup>26</sup> See 7 U.S.C. 6(c)(6).

<sup>27</sup> See 7 U.S.C. 6(c)(6)(A) and (B).

of the CEA, when issuing an electricity exemption under section 4(c)(6).<sup>28</sup> Section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirements of section 4(a) or any other requirements of the Act other than section 2(a)(1)(C)(ii) and (D). The Commission may attach terms and conditions to any exemption it provides.

Section 4(c)(2) of the CEA<sup>29</sup> provides that the Commission may not approve an exemption from the execution requirements of the Act, as noted in section 4(a),<sup>30</sup> unless the agreement, contract or transaction will be entered into solely between “appropriate persons,” as that term is defined in section 4(c)(3), which does not include retail customers (such as small businesses or individuals). In addition,

<sup>28</sup> Section 4(c) was added to the CEA by the Futures Trading Practices Act of 1992, Public Law 102–564. The Commission’s authority under section 4(c) was explained by the Conferees:

In granting exemptive authority to the Commission under new section 4(c), the Conferees recognize the need to create legal certainty for a number of existing categories of instruments which trade today outside of the forum of a designated contract market.

The provision included in the Conference substitute is designed to give the Commission broad flexibility in addressing these products

\* \* \* \* \*

In this respect, the Conferees expect and strongly encourage the Commission to use its new exemptive power promptly upon enactment of this legislation in four areas where significant concerns of legal uncertainty have arisen: (1) Hybrids, (2) swaps, (3) forwards, and (4) bank deposits and accounts.

The Commission is not required to ascertain whether a particular transaction would fall within its jurisdiction prior to exercising its exemptive authority under section 4(c). The Conferees stated that they did:

not intend that the exercise of exemptive authority by the Commission would require any determination before hand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward \* \* \*

H.R. Rep. No. 978, 102d Cong. 2d Sess., (1992) at 82–83.

<sup>29</sup> Section 4(c)(2), 7 U.S.C. 6(c)(2), states:

The Commission shall not grant any exemption \* \* \* from any of the requirements of subsection (a) unless the Commission determines that (A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and (B) the agreement, contract, or transaction—

(i) Will be entered into solely between appropriate persons; and

(ii) Will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act.

<sup>30</sup> 7 U.S.C. 6(a).

the Commission must determine that the agreement, contract or transaction in question will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties.<sup>31</sup>

### III. Background—FERC and PUCT

#### A. Introduction

Each Petitioner is subject to regulation by FERC, with the exception of ERCOT, which is regulated by PUCT.<sup>32</sup> Petitioners assert that the regulatory frameworks administered by FERC or PUCT, as applicable to each particular RTO or ISO market, would apply to the transactions for which an exemption has been requested.<sup>33</sup>

#### B. FERC

In 1920, Congress established the Federal Power Commission (“FPC”).<sup>34</sup> The FPC was reorganized into FERC in 1977.<sup>35</sup> FERC is an independent agency that regulates the interstate transmission of electricity, natural gas and oil.<sup>36</sup> FERC’s mission is to “assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means.”<sup>37</sup> This mission is accomplished by pursuing two primary goals. First, FERC seeks to ensure that rates, terms and conditions for wholesale transactions and transmission of electricity and natural gas are just, reasonable and not unduly discriminatory or preferential.<sup>38</sup> Second, FERC seeks to promote the development of safe, reliable and efficient energy infrastructure that serves the public interest.<sup>39</sup> Both Congress and FERC, through a series of legislative acts and Commission orders, have sought to establish a system whereby wholesale electricity generation and transmission in the United States is governed by two guiding principles; regulation with respect to wholesale electricity

<sup>31</sup> See 7 U.S.C. 6(c)(2).

<sup>32</sup> See Petition at 4.

<sup>33</sup> See *id.* at 11.

<sup>34</sup> Federal Power Act, 16 U.S.C. 791a *et seq.*

<sup>35</sup> The Department of Energy Organization Act, Public Law 95–91, section 401, 91 Stat. 565, 582 (1977) (codified as amended at 42 U.S.C. 7171 (1988)).

<sup>36</sup> See 42 U.S.C. 7172.

<sup>37</sup> See FERC Strategic Plan for Fiscal Years 2009–2014, 3 (Feb. 2012), <http://www.ferc.gov/about/strat-docs/FY-09-14-strat-plan-print.pdf>.

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

<sup>39</sup> *Id.*

transmission,<sup>40</sup> and competition when dealing with wholesale generation.<sup>41</sup>

In 1996, FERC issued FERC Order 888, which promoted competition in the generation market by ensuring fair access and market treatment by transmission customers.<sup>42</sup> Specifically, FERC Order 888 sought to “remedy both existing and future undue discrimination in the industry and realize the significant customer benefits that will come with open access.”<sup>43</sup> FERC Order 888 encouraged the formation of ISOs as a potentially effective means for accomplishing non-discriminatory open access to the transmission of electrical power.<sup>44</sup>

In addition, FERC has issued orders that address areas such as increased RTO and ISO participation by transmission utilities, increased use of long-term firm transmission rights, increased investment in transmission infrastructure, reduced transmission congestion and the use of demand-response.<sup>45</sup> The end result of this series of FERC orders is that a regulatory system has been established that requires ISOs and RTOs to comply with numerous FERC rules designed to improve both the reliability of the physical operations of electric transmission systems as well as the

competitiveness of electricity markets. The requirements imposed by the various FERC Orders seek to ensure that FERC is able to accomplish its two main goals; ensuring that rates, terms and conditions are just, reasonable and not unduly discriminatory or preferential, while promoting the development of safe, reliable and efficient energy infrastructure that serves the public interest.

#### C. PUCT

In 1975, the Texas Legislature enacted the Public Utility Regulatory Act (“PURA”) and created PUCT to provide statewide regulation of the rates and services of electric and telecommunications utilities.<sup>46</sup> PUCT’s stated mission is to assure the availability of safe, reliable, high quality services that meet the needs of all Texans at just and reasonable rates.<sup>47</sup> To this end, PUCT regulates electric and telecommunications utilities while facilitating competition, operation of the free market, and customer choice.<sup>48</sup> Subchapter S of TAC § 25 (“Wholesale Markets”) sets out the rules applicable to ERCOT, which operates a wholesale electricity market in Texas similar to the electricity markets run by the other Petitioners. As with the RTOs and ISOs regulated by FERC, ERCOT is required to have rules that address the regulatory requirements imposed by PUCT.<sup>49</sup> These rules address issues similar to those rules imposed by FERC on RTOs and ISOs,<sup>50</sup> including matters such as market design, pricing safeguards, market monitoring, monitoring for wholesale market power, resource adequacy and ERCOT emergency response services,<sup>51</sup> and are aimed at developing electricity markets that are able to provide reliable, safe and efficient electric service to the people of Texas, while also maintaining rates at an affordable level through the operation of fair competition.<sup>52</sup>

#### D. FERC & PUCT Oversight

As discussed above, both FERC and PUCT assert that their primary goal in regulating their respective electricity markets is to ensure that consumers are able to purchase electricity on a safe, reliable and affordable basis.<sup>53</sup>

## IV. Scope of the Exemption

### A. Transactions Subject to the Exemption

After due consideration, the Commission proposes to exempt certain Financial Transmission Rights (“FTRs”), Energy Transactions, Forward Capacity Transactions, and Reserve or Regulation Transactions (collectively, the “Transactions”), each as defined below, pursuant to section 4(c)(6) of the Act.

An FTR is a transaction, however named, that entitles one party to receive, and obligates another party to pay, an amount based solely on the difference between the price for electricity, established on an electricity market administered by a Petitioner, at a specified source (*i.e.*, where electricity is deemed injected into the grid of a Petitioner) and a specified sink (*i.e.*, where electricity is deemed withdrawn from the grid of a Petitioner).<sup>54</sup> The term “FTR” includes Financial Transmission Rights, and Financial Transmission Rights in the form of options (*i.e.*, where one party has only the obligation to pay, and the other party only the right to receive, an amount as described above). As more fully described below, the Proposed Exemption applies only to FTRs where each FTR is linked to, and the aggregate volume of FTRs for any period of time is limited by, the physical capability (after accounting for counterflow) of the electricity transmission system operated by the Petitioner offering the contract for such period: a Petitioner serves as the market administrator for the market on which the FTR is transacted; each party to the Transaction is a member of the particular Petitioner (or is the Petitioner itself) and the Transaction is executed on a market administered by that Petitioner; and the Transaction does not require any party to make or take physical delivery of electricity.<sup>55</sup>

“Energy Transactions” are transactions in a “Day-Ahead Market”

2012), <http://www.ferc.gov/about/strat-docs/FY-09-14-strat-plan-print.pdf>.

<sup>54</sup> Petition at 6.

<sup>55</sup> Each FTR specifies a direction along a path from a specified source to a specified sink. Counterflow FTRs specify a path where congestion in the physical market is in the opposite direction from the prevailing flow. Holders of counterflow FTRs generally pay congestion revenues to the RTO or ISO. Because counterflow FTRs are expected to result in payment liability to the FTR holder, the price of counterflow FTRs are typically negative. That is, the RTO or ISO pays market participants to acquire them. However, counterflow FTRs may be profitable (and prevailing flow FTRs may result in a payment liability) where congestion in the physical market occurs in direction opposite to that expected. See generally PJM Interconnection, L.L.C., 122 FERC ¶ 61,279 (2008); see also PJM Interconnection, L.L.C., 121 FERC ¶ 61,089 (2007).

<sup>40</sup> The term “wholesale transmission services” means the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.” See 16 U.S.C. 796 (24)).

<sup>41</sup> See generally FERC Order 888. See also FERC’s discussion of electric competition, available at <http://www.ferc.gov/industries/electric/indus-act/competition.asp> (stating that “[FERC]’s core responsibility is to ‘guard the consumer from exploitation by non-competitive electric power companies.’”).

<sup>42</sup> See FERC Order 888.

<sup>43</sup> FERC Order 888 at 21541.

<sup>44</sup> FERC Order 888 at 21594. Under the old system, one party could own both generation and transmission resources, giving preferential treatment to its own and affiliated entities. See generally FERC Order 888.

<sup>45</sup> See, e.g., FERC Order 2000, 65 FR 809 (2000)(encouraging transmission utilities to join RTOs); FERC Order No. 681, 71 FR 43294 (2006), FERC Stats. & Regs. ¶ 31,222 (2006), order on reh’g, Order No. 679-A, 72 FR 1152, Jan. 10, 2007, FERC Stats. & Regs. ¶ 31,236, order on reh’g, 119 FERC ¶ 61,062 (2007) (finalizing guidelines for ISOs to follow in developing proposals to provide long-term firm transmission rights in organized electricity markets); FERC Order No. 679, 71 FR 43294 (2006) (finalizing rules to increase investment in the nation’s aging transmission infrastructure, and to promote electric power reliability and lower costs for consumers, by reducing transmission congestion); FERC Order No. 890, 72 FR 12266 (2007)(modifying existing rules to promote the nondiscriminatory and just operation of transmission systems); and FERC Order No. 719-A, 74 FR 37776 (2009) (implementing the use of demand-response (the process of requiring electricity consumers to reduce their electricity use during times of heightened demand), encouraging the use of long-term power contracts and strengthening the role of market monitors).

<sup>46</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. 11.001 *et seq.* (Vernon 1998 & Supp. 2005).

<sup>47</sup> 16 Texas Admin. Code (“TAC”) 25.1 (1998).

<sup>48</sup> *Id.*

<sup>49</sup> See generally 16 TAC 25.501–25.507.

<sup>50</sup> See generally *id.*

<sup>51</sup> See generally *id.*

<sup>52</sup> See generally 16 TAC 25.503.

<sup>53</sup> See generally 16 TAC 25.1. See also FERC Strategic Plan for Fiscal Years 2009–2014, 3 (Feb.

or “Real-Time Market,” as those terms are defined in the Proposed Exemption, for the purchase or sale of a specified quantity of electricity at a specified location where the price of electricity is established at the time the transaction is executed.<sup>56</sup> Performance occurs in the Real-Time Market by either the physical delivery or receipt of the specified electricity or a cash payment or receipt at the price established in the Real-Time Market; and the aggregate cleared volume of both physical and cash-settled energy transactions for any period of time is limited by the physical capability of the electricity transmission system operated by a Petitioner for that period of time.<sup>57</sup> Energy Transactions are also referred to as Virtual Bids or Convergence Bids.<sup>58</sup>

“Forward Capacity Transactions” fall into three distinct categories, Generation Capacity (“GC”), Demand Response (“DR”), and Energy Efficiency.<sup>59</sup> GC refers to the right of a Petitioner to require certain sellers to maintain the interconnection of electric generation facilities to specific physical locations in the electric power transmission system during a future time period as specified in the Petitioner’s Tariff.<sup>60</sup> Furthermore, a GC contract requires a seller to offer specified amounts of electric energy into the Day-Ahead or Real-Time Markets for electricity transactions. A GC contract also requires a seller, subject to the terms and conditions of a Petitioner’s Tariff, to inject electric energy into the electric power transmission system operated by the Petitioner.<sup>61</sup> A DR Right gives Petitioners the right to require that certain sellers of such rights curtail their consumption of electricity from Petitioner’s electricity transmission system during a future period of time as specified in the Petitioners’ Tariffs.<sup>62</sup> Energy Efficiency Rights (“EER”) provides Petitioners with the right to require specific performance of an action or actions on the part of the other party that will reduce the need for GC or DR capacity over the duration of a future period of time as specified in the Petitioner’s Tariffs.<sup>63</sup> Moreover, for a Forward Capacity Transaction to be

eligible for exemption hereunder, the aggregate cleared volume of all such transactions for any period of time must be limited to the physical capability of the electric transmission system operated by the applicable Petitioner for that period of time.

“Reserve Regulation Transactions” allow a Petitioner to purchase through auction, for the benefit of load serving entities (“LSEs”) and resources, the right, during a period of time specified in the Petitioner’s Tariff, to require the seller to operate electric facilities in a physical state such that the facilities can increase or decrease the rate of injection or withdrawal of electricity to the electric power transmission system operated by the Petitioner with physical performance by the seller’s facilities within a response interval specified in the Petitioner’s tariff (Reserve Transaction), or prompt physical performance by the seller’s facilities (Area Control Error Regulation Transaction).<sup>64</sup> In consideration for such delivery, or withholding of delivery, the seller receives compensation of the type specified in section VIII below.<sup>65</sup> In all cases, the quantity and specifications for such Transactions for a Petitioner for any period of time are limited by the physical capability of the electric transmission system operated by Petitioners.<sup>66</sup> These Transactions are typically used to address unforeseen fluctuations in the level of electricity demand experienced on the electric transmission system.

### B. Conditions

The Proposed Exemption would be subject to certain conditions. First, all parties to the agreements, contracts or transactions that are covered by the Proposed Exemption must be either “appropriate persons,” as such term is defined in sections 4(c)(3)(A) through (J) of the Act, or “eligible contract participants,” as such term is defined in section 1a(18)(A) of the Act and in Commission regulation 1.3(m).<sup>67</sup>

Second, the agreements, contracts or transactions that are covered by the Proposed Exemption must be offered or sold pursuant to a Petitioner’s tariff, which has been approved or permitted to take effect by:

(1) In the case of ERCOT, the PUCT or

(2) In the case of all other Petitioners, FERC.

Third, none of a Petitioner’s tariffs or other governing documents may include any requirement that the Petitioner notify a member prior to providing information to the Commission in response to a subpoena or other request for information or documentation.

Finally, information sharing arrangements that are satisfactory to the Commission between the Commission and FERC and between the Commission and PUCT must be in full force and effect.<sup>68</sup>

### C. Additional Limitations

As discussed above, the Commission proposes to exempt the Transactions pursuant to section 4(c)(6) of the Act based, in part, on certain representations made by Petitioners as well as the additional limitations that are noted below. As represented in the Petition, the exemption requested by Petitioners relate to Transactions that are primarily entered into by commercial participants that are in the business of generating, transmitting and distributing electricity.<sup>69</sup> In addition, the Commission notes that it appears that Petitioners were established for the purpose of providing affordable, reliable electricity to consumers within their geographic region.<sup>70</sup> Critically, these Transactions are an essential means, designed by FERC and PUCT as an integral part of their statutory responsibilities, to enable the reliable delivery of affordable electricity.<sup>71</sup> The Commission also notes that each of the Transactions taking place on Petitioners’ markets is monitored by Market Monitoring Units (“MMU”) responsible to either FERC or, in the case of ERCOT, PUCT.<sup>72</sup> Finally, as discussed above, each Transaction is directly tied to the physical capabilities of Petitioners’ electricity grids.<sup>73</sup> As more fully described below,<sup>74</sup> and on the basis of the aforementioned representations, the Commission finds that the Proposed Exemption would be in the public interest for the specified Transactions.

<sup>68</sup> As discussed in section VIII.A. below, the Commission and FERC have already entered into a Memorandum of Understanding, a copy of which is available at <http://www.ferc.gov/legal/maj-ord-reg/mou/mou-33.pdf>. In addition, the Commission intends on working with the PUCT on an MOU that is mutually satisfactory.

<sup>69</sup> See generally Petition at 20.

<sup>70</sup> See *id.* at 3–4.

<sup>71</sup> See generally FERC Order 888; FERC Order 2000; 18 CFR 35.34(k)(2); and TAC 25.1. See also Petition at 11, 13–14.

<sup>72</sup> Petition at 15–18.

<sup>73</sup> See *id.* at 6–9.

<sup>74</sup> See the discussions in sections V.B., V.D., and V.E. below.

<sup>56</sup> See Petition at 7. See also section VIII. below.

<sup>57</sup> See *id.* at 7. See also section VIII. below.

<sup>58</sup> See *id.* at 6.

<sup>59</sup> See *id.* at 7–8.

<sup>60</sup> See *id.* at 7.

<sup>61</sup> See *id.*

<sup>62</sup> See *id.* at 7.

<sup>63</sup> See *id.* at 8. Another example of an EER would be requiring an RTO or ISO member to change equipment in order to improve the efficiency of the system, and in turn, reduce the amount of electricity drawn from the system. See also section VIII. below.

<sup>64</sup> See *id.* at 8–9. See also section VIII. below.

<sup>65</sup> See *id.* at 8.

<sup>66</sup> See *id.* at 8–9.

<sup>67</sup> That is, the Commission is proposing to use its authority pursuant to CEA 4(c)(3)(K) to include eligible contract participants as appropriate persons for the purposes of this Order. See *infra* n. 80 and accompanying text.

To be clear, however, financial transactions that are not tied to the allocation of the physical capabilities of an electric transmission grid would not be suitable for exemption because such activity would not be inextricably linked to the physical delivery of electricity.

## V. Section 4(c) Analysis

### A. Overview of CEA Section 4(c)

#### 1. Sections 4(c)(6)(A) and (B)

The Dodd-Frank Act amended CEA section 4(c) to add sections 4(c)(6)(A) and (B), which provide for exemptions for certain transactions entered into (a) pursuant to a tariff or rate schedule approved or permitted to take effect by FERC, or (b) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality, as eligible for exemption pursuant to the Commission's 4(c) exemptive authority.<sup>75</sup> Indeed, 4(c)(6) provides that "[i]f the Commission determines that the exemption would be consistent with the public interest and the purposes of this chapter, the Commission shall" issue such an exemption. However, any exemption considered under 4(c)(6)(A) and/or (B) must be done "in accordance with [CEA section 4(c)(1) and (2)]."<sup>76</sup>

#### 2. Section 4(c)(1)

CEA section 4(c)(1) requires that the Commission act "by rule, regulation or order, after notice and opportunity for hearing." It also provides that the Commission may act "either unconditionally or on stated terms or

conditions or for stated periods and either retroactively or prospectively or both" and that the Commission may provide exemption from any provisions of the CEA except subparagraphs (C)(ii) and (D) of section 2(a)(1).<sup>77</sup>

#### 3. Section 4(c)(2)

CEA section 4(c)(2) requires the Commission to determine that: To the extent an exemption provides relief from any of the requirements of CEA section 4(a), the requirement should not be applied to the agreement, contract or transaction; the exempted agreement, contract, or transactions will be entered into solely between appropriate persons;<sup>78</sup> and the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.<sup>79</sup>

#### 4. Section 4(c)(3)

CEA section 4(c)(3) outlines who may constitute an appropriate person for the

purpose of a 4(c) exemption, including as relevant to this Notice: (a) Any person that fits in one of ten defined categories of appropriate persons; or (b) such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.<sup>80</sup>

### B. Proposed CEA Section 4(c) Determinations

In connection with the Proposed Exemption, the Commission has considered and proposes to determine that: (i) The Proposed Exemption is consistent with the public interest and the purposes of the CEA; (ii) CEA section 4(a) should not apply to the transactions or entities eligible for the Proposed Exemption, (iii) the persons eligible to rely on the Proposed Exemption are appropriate persons pursuant to CEA section 4(c)(3); and (iv) the Proposed Exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.

<sup>77</sup> Section 4(c)(1), 7 U.S.C. 6(c)(1), states:

(c)(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except subparagraphs (C)(ii) and (D) of section 2(a)(1), except that—

(A) Unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

(i) With respect to—

(I) Paragraphs (2), (3), (4), (5), and (7), paragraph (18)(A)(vii)(III), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a, and sections 2(a)(13), 2(c)(1)(D), 4a(a), 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a), 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i), 8e, and 21; and

(II) Section 206(e) of the Gramm-Leach-Bliley Act (Pub. L. 106-102; 15 U.S.C. 78c note); and

(ii) in sections 721(c) and 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(B) The Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) if the Commissions determine that the exemption would be consistent with the public interest.

<sup>78</sup> See CEA 4(c)(2)(B)(i) and the discussion of CEA section 4(c)(3) below.

<sup>79</sup> CEA section 4(c)(2)(A) also requires that the exemption would be consistent with the public interest and the purposes of the CEA, but that requirement duplicates the requirement of section 4(c)(6).

<sup>80</sup> Section 4(c)(3), 7 U.S.C. 6(c)(3), provides that: the term "appropriate person" shall be limited to the following persons or classes thereof:

(A) A bank or trust company (acting in an individual or fiduciary capacity).

(B) A savings association.

(C) An insurance company.

(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(E) A commodity pool formed or operated by a person subject to regulation under this Act.

(F) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.

(G) An employee benefit plan with assets exceeding \$1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq.), or a commodity trading advisor subject to regulation under this Act.

(H) Any governmental entity (including the United States, any state, 4-1 or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.

(I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person.

(J) A futures commission merchant, floor broker, or floor trader subject to regulation under this Act acting on its own behalf or on behalf of another appropriate person.

(K) Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

<sup>75</sup> The exemption language in section 4(c)(6) reads:

(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

(A) Pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

(B) Pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

(C) Between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).

<sup>76</sup> CEA section 4(c)(6) explicitly directs the Commission to consider any exemption proposed under 4(c)(6) "in accordance with [CEA section 4(c)(1) and (2)]."

1. Consistent with the Public Interest and the Purposes of the CEA

As required by CEA section 4(c)(2)(A), as well as section 4(c)(6), the Commission proposes to determine that the Proposed Exemption is consistent with the public interest and the purposes of the CEA. Section 3(a) of the CEA provides that transactions subject to the CEA affect the national public interest by providing a means for managing and assuming price risk, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities. Section 3(b) of the CEA identifies the purposes of the CEA:

It is the purpose of this Act to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.

The Petitioners assert that the Proposed Exemption would be consistent with the public interest and purposes of the CEA,<sup>81</sup> stating generally that: (a) The Transactions have been, and are, subject to a long-standing, comprehensive regulatory framework for the offer and sale of the Transactions established by FERC or PUCT; and (b) the Transactions administered by the RTOs/ISOs or ERCOT are part of, and inextricably linked to, the organized wholesale electricity markets that are subject to FERC and PUCT regulation and oversight.<sup>82</sup> For example, Petitioners explain that FERC Order No. 2000 (which, along with FERC Order No. 888, encouraged the formation of RTOs/ISOs to operate the electronic transmission grid and to create organized wholesale electric markets) requires an RTO/ISO to demonstrate that it has four minimum characteristics: (1) Independence from any market participant; (2) a scope and regional configuration which enables the ISO/RTO to maintain reliability and effectively perform its required functions; (3) operational authority for its activities, including being the security coordinator for the facilities

that it controls; and (4) short-term reliability.<sup>83</sup> Petitioners highlight that an RTO/ISO must demonstrate to FERC that it performs certain self-regulatory and/or market monitoring functions,<sup>84</sup> and the Petition describes the analogous requirements applicable to ERCOT under PUCT and the PURA.<sup>85</sup>

Of single importance, Petitioners are responsible for “ensur[ing] the development and operation of market mechanisms to manage transmission congestion. \* \* \* The market mechanisms must accommodate broad participation by all market participants, and must provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions.”<sup>86</sup>

Petitioners also explain that the Transactions are primarily entered into by commercial participants that are in the business of generating, transmitting, and distributing electricity,<sup>87</sup> and that Petitioners were established for the purpose of providing affordable, reliable electricity to consumers within their geographic region.<sup>88</sup> Furthermore, the Transactions that take place on Petitioners’ markets are overseen by a market monitoring function, required by FERC for each Petitioner, and by PUCT in the case of ERCOT, to identify

manipulation of electricity on Petitioners’ markets.<sup>89</sup>

Fundamental to the Commission’s “public interest” and “purposes of the [Act]” analysis is the fact that the Transactions are inextricably tied to the Petitioners’ physical delivery of electricity, as represented in the Petition.<sup>90</sup> An equally important factor is that the Proposed Exemption is explicitly limited to Transactions taking place on markets that are monitored by either an independent market monitor, a market administrator (the RTO/ISO, or ERCOT), or both, and a government regulator (FERC or PUCT). In contrast, an exemption for financial transactions that are not so monitored, or not related to the physical capacity of an electric transmission grid, or not directly linked to the physical generation and transmission of electricity, or not limited to appropriate persons,<sup>91</sup> is unlikely to be in the public interest or consistent with the purposes of the CEA and would not be subject to this exemption.

Finally, and as discussed in detail below, the extent to which the Proposed Exemption is consistent with the public interest and the purposes of the Act can, in major part, be measured by the extent to which the tariffs and activities of the Petitioners, and supervision by FERC and PUCT, are congruent with, and sufficiently accomplish, the regulatory objectives of the relevant core principles set forth in the CEA for derivatives clearing organizations (“DCOs”) and swap execution facilities (“SEFs”). Specifically, providing a means for managing or assuming price risk and discovering prices, as well as prevention of price manipulation and other disruptions to market integrity, are addressed by the core principles for SEFs. Ensuring the financial integrity of the transactions and the avoidance of systemic risk, as well as protection from the misuse of participant assets, are addressed by the core principles for DCOs. Deterrence of price manipulation (or other disruptions to market integrity) and protection of market participants from fraudulent sales practices is achieved by the Commission retaining and exercising its jurisdiction over these matters. Therefore, the Commission has incorporated its DCO/SEF core principle analysis, set forth below, into its consideration of the Proposed

<sup>83</sup> See *id.* at 13.

<sup>84</sup> See *id.* at 13–14 (explaining that each RTO/ISO must employ a transmission pricing system that promotes efficient use and expansion of transmission and generation facilities; develop and implement procedures to address parallel path flow issues within its region and with other regions; serve as a provider of last resort of all ancillary services required by FERC Order No. 888 including ensuring that its transmission customers have access to a real-time balancing market; be the single OASIS (Open-Access Same-Time Information System) site administrator for all transmission facilities under its control and independently calculate Total Transmission Capacity and Available Transmission Capability; provide reliable, efficient and not unduly discriminatory transmission service; it must provide for objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvements; be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades; and ensure the integration of reliability practices within an interconnection and market interface practices among regions).

<sup>85</sup> See *id.* at 14–15. Pursuant to PURA 39.151(a), ERCOT’s roles and duties are to provide access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms; ensure the reliability and adequacy of the regional electrical network; ensure that information relating to a customer’s choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region.

<sup>86</sup> See Petition at 14. See also 18 CFR 35.34(k)(2).

<sup>87</sup> See generally Petition at 20.

<sup>88</sup> See *id.* at 3–4.

<sup>89</sup> See *id.* at 15–18.

<sup>90</sup> See *id.* at 6–9 (describing the Transactions and noting that each of them “is part of, and inextricably linked to, the organized wholesale electricity markets that are subject to FERC and PUCT regulation and oversight”).

<sup>91</sup> See appropriate persons discussion, below, section V.B.3.

<sup>81</sup> See Petition at 11.

<sup>82</sup> See *id.*

Exemption's consistency with the public interest and the purposes of the Act. In the same way, the Commission has considered how the public interest and the purposes of the CEA are also addressed by the manner in which Petitioners comply with FERC's Credit Reform Policy.<sup>92</sup>

Based on this review, the Commission proposes to determine that the Proposed Exemption is consistent with the public interest and the purposes of the CEA, and the Commission is specifically requesting comment on whether the Proposed Exemption is consistent with the public interest and the purposes of the Act.

## 2. CEA Section 4(a) Should Not Apply to the Transactions or Entities Eligible for the Proposed Exemption

CEA section 4(c)(2)(A) requires, in part, that the Commission determine that the Transactions covered under the Proposed Exemption should not be subject to CEA section 4(a)—generally, the Commission's exchange trading requirement for a contract for the purchase or sale of a commodity for future delivery. Based in major part on the Petitioners' representations, the Commission has examined the Transactions, the Petitioners, and their markets in the context of the CEA core principle requirements applicable to a DCO and to a SEF.<sup>93</sup> As further support for this determination, the Commission is also relying on the public interest and the purposes of the Act analysis in subsection 3 below. In so doing, the Commission can determine that, due to the FERC or PUCT regulatory scheme and the RTO/ISO or ERCOT market structure already applicable to the Transactions, the linkage between the Transactions and those regulatory schemes, and the unique nature of the market participants that would be eligible to rely on the Proposed Exemption,<sup>94</sup> CEA section 4(a) should not apply to the Transactions under the Proposed Exemption.

The Commission is requesting comment on whether its Proposed Exemption of the Transactions from CEA section 4(a) is appropriate.

## 3. Appropriate Persons

CEA section 4a(c)(2)(B)(i) requires that the Commission determine that the Proposed Exemption is properly limited to transactions entered into between

appropriate persons as described in CEA section 4(c)(3). The Petitioners assert that each Petitioner's market participants fit within the "appropriate person" requirement under CEA section 4(c)(3), relying primarily on two categories of appropriate persons. The first category includes those entities that have a net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000, as identified in CEA section 4(c)(3)(F).<sup>95</sup> The second group of appropriate persons would fall within a grouping under CEA section 4(c)(3)(K), which includes persons deemed appropriate by the Commission "in light of their financial or other qualifications, or the applicability of appropriate regulatory protection."<sup>96</sup>

The Petitioners explain that FERC has instructed all RTOs and ISOs subject to FERC supervision<sup>97</sup> to create minimum standards for market participants. The Petitioners state that:

In Order No. 741, FERC directed each of the ISOs/RTOs to establish minimum criteria for market participants. FERC did not specify the criteria the ISOs/RTOs should apply, but rather directed them to establish criteria through their stakeholder processes. Accordingly, each of the FERC jurisdictional ISOs/RTOs submitted to FERC proposals to establish minimum criteria for participation in their markets. Although ERCOT is not subject to the requirements FERC's Credit Reform Orders, ERCOT is reviewing its participant eligibility standards to ensure that they are consistent with the requirements of Section 4(c). These proposals were accepted by FERC subject to a supplemental compliance filing to provide for verification of risk management policies and procedures.

Although there is some variation among the minimum participation criteria adopted by each ISO/RTO, included in each is a baseline capitalization requirement that participants have net worth of at least \$1 million or total assets of at least \$10 million.<sup>98</sup>

<sup>95</sup> CEA section 4(c)(3)(F) provides that the following entities are "appropriate persons" that the Commission may exempt under CEA section 4(a). The relevant text of 4(c)(3)(F) provides: "A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph."

<sup>96</sup> CEA 4(c)(3)(K).

<sup>97</sup> According to the Petition, ERCOT is reviewing its "participants eligibility standards to ensure that they are consistent with the requirements of [CEA] Section 4(c)." Petition at 27. See also Attachment C to Petition, beginning at Attachments at 27 ("Through its stakeholder process, ERCOT is in the process of developing new eligibility requirements that are comparable to those required by FERC Order No. 741.")

<sup>98</sup> Petition at 26–27 (citations omitted).

However, the Petitioners acknowledge that there are exceptions to this "baseline capitalization requirement," that is, market participants who do not meet the minimum net worth or total assets criteria under the CEA who pursuant to Petitioners' Tariffs must post financial security because they are under-capitalized. Nonetheless, as the Petitioners explain, there is an exception to the posting requirement for market participants with small positions. The Petitioners provide the following explanation for the exception:

The criteria of some ISOs/RTOs also reduce the financial security posting requirement for certain entities that maintain only small positions on the markets of the ISO/RTO and therefore expose the ISOs/RTOs to minimal risk. These entities are instead required to post additional financial security with the ISO/RTO in an amount that would depend on the size of their positions. In this regard, a notable number of participants in the markets of some ISOs/RTOs include cooperatives, municipalities or other forms of public corporate entities which are authorized to own, lease and operate electric generation, transmission or distribution facilities. [99] Such entities' participation in the ISO/RTO may be necessary to make electricity available within the entire grid for a region. Nevertheless, they are "appropriate persons" because of their active participation in the generation, transmission or distribution of electricity and the knowledge of the wholesale energy market that they have as a consequence of their participation in the physical markets. Moreover, the municipal entities are entitled to recover their costs for native load service through governmentally established retail rates and, accordingly, are able to provide a form of financial security (*i.e.*, the ability to request a retail rate increase to cover increased costs) that is unavailable to other participants in the energy markets. As such, the risk of default by such entities is materially lower than it is for other Market Participants.<sup>100</sup>

The Commission is proposing to limit the Proposed Exemption to entities that meet one of the appropriate persons categories in CEA section 4(c)(3)(A) through (J), or, pursuant to CEA section 4(c)(3)(K), that otherwise qualify as an eligible contract participant ("ECP"), as that term has been defined.<sup>101</sup> In this

<sup>99</sup> The Commission notes here that CEA 4(c)(3)(H) includes as eligible appropriate persons "Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing." This appropriate persons category would cover the municipalities and other government owned market participants.

<sup>100</sup> Petition at 27 (citations omitted).

<sup>101</sup> See CEA 1(a)(12). See also "Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based

<sup>92</sup> See FERC Credit Reform Policy discussion, below, at section V.C.

<sup>93</sup> See DCO core principle analysis below, at section V.D.; see also SEF core principle analysis below, at section V.E.

<sup>94</sup> See appropriate persons analysis, below, at section V.B.3.

connection, the Commission notes that the municipal entities discussed above appear to qualify as “appropriate persons” pursuant to CEA section 4(c)(3)(H).<sup>102</sup>

Based on representations contained in the Petition, the Commission can determine the Proposed Exemption is limited to appropriate persons for those market participants meeting the categories described defined in CEA section 4(c)(3)(A) through (J). The CFTC is requesting comment as to whether the entities defined in CEA section 4(c)(3)(A) through (J) are appropriate persons for the purpose of the Proposed Exemption.

For those ECPs engaging in Transactions in markets administered by the Petitioner that do not fit within 4(c)(3)(A) through (J), the Commission is proposing to determine that they are appropriate persons pursuant to section 4(c)(3)(K), “in light of their financial or other qualifications, or the applicability of appropriate regulatory protections” to the extent that such persons are otherwise ECPs. The Commission can base this determination on the financial security posting schemes, described by the Petitioners, applicable to the entities engaging in the Transactions, as well as the market based protections applicable to the Transactions regardless of participant, as described in the Commission’s public interest and purposes of the Act analysis, above. In addition, CEA section 2(e) permits all ECPs to engage in swaps transactions other than on a designated contract market (“DCM”), and so such entities should similarly be appropriate persons for the purpose of the Proposed Exemption. The Commission is requesting comment on whether the market participants entering into the Transactions in markets administered by the Petitioners, particularly those that do not fit within 4(c)(3)(A) through (J), but that are ECPs, may nonetheless be appropriate persons pursuant to CEA section 4(c)(3)(K), in light of the financial posting scheme that applies to such participants, and in light of the regulatory and market oversight programs that apply to the Transactions in the Petitioners’ markets.

The Commission also requests comment as to whether there are currently entities engaging in the Transactions that are neither entities that fall within CEA section 4(c)(3)(A)

through (J) entities nor ECPs. If there are such entities, on what basis may the Commission similarly conclude that such entities are, pursuant to CEA section 4(c)(3)(K), appropriate persons for the purpose of the Proposed Exemption? In particular, the Commission seeks comment as to whether there any other of the Petitioners’ market participants that “active[ly] participat[e] in the generation, transmission or distribution of electricity” that are not ECPs and do not fall within CEA section 4(c)(3)(A) through (J), who should nonetheless be included as appropriate persons pursuant to CEA section 4(c)(3)(K).

#### 4. Will Not Have a Material Adverse Effect on the Ability of the Commission or Any Contract Market To Discharge Its Regulatory or Self-Regulatory Duties Under the CEA

CEA section 4(c)(2)(B)(ii) requires the Commission to determine that the Transactions subject to the Proposed Exemption will not have a material adverse effect on the ability of the Commission or any contract markets to perform regulatory or self-regulatory duties.<sup>103</sup> In making this determination, Congress indicated that the Commission is to consider such regulatory concerns as “market surveillance, financial integrity of participants, protection of customers and trade practice enforcement.”<sup>104</sup> These considerations are similar to the purposes of the Act as defined in CEA section 3, initially addressed in the public interest discussion, above.

Petitioners contend that the Proposed Exemption will not have a material adverse effect on the Commission’s or any contract market’s ability to discharge its regulatory function,<sup>105</sup> asserting that:

Under Section 4(d) of the Act, the Commission will retain authority to conduct investigations to determine whether [Petitioners] are in compliance with any exemption granted in response to this request. \* \* \* [T]he requested exemptions would also preserve the Commission’s existing enforcement jurisdiction over fraud and manipulation. This is consistent with section 722 of the Dodd-Frank Act, the existing MOU between the FERC and the Commission and other protocols for inter-agency cooperation. The [Petitioners] will continue to retain records related to the Transactions, consistent with existing obligations under FERC and PUCT regulations.

The regulation of exchange-traded futures contracts and significant price discovery

contracts (“SPDCs”) will be unaffected by the requested exemptions. Futures contracts based on electricity prices set in the Petitioners’ markets that are traded on a designated contract market and SPDCs will continue to be regulated by and subject to the requirements of the Commission. No current requirement or practice of the ISOs/RTOs or of a contract market will be affected by the Commission’s granting the requested exemptions.<sup>106</sup>

These factors appear to support the Proposed Exemption. In addition, the limitation of the exemption to Transactions between certain “appropriate persons” as discussed above, avoids potential issues regarding financial integrity and customer protection. That is, this approach would appear to ensure that Transactions subject to this Proposed Exemption would be limited to sophisticated entities that are able to, from a financial standpoint, understand and manage risks associated with such Transactions.

Moreover, the Proposed Exemption does not exempt Petitioners from CEA sections 2(a)(1)(B), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13, to the extent that those sections prohibit fraud or manipulation of the price of any swap, contract for the sale of a commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market. Therefore, the Commission retains authority to pursue fraudulent or manipulative conduct.<sup>107</sup>

In addition, it appears that granting the exemption for the Transactions will not have a material adverse effect on the ability of any contract market to discharge its self-regulatory duties under the Act. With respect to FTRs, Forward Capacity Transactions, and Reserve or Regulation Transactions, these transactions do not appear to be used for price discovery or as settlement prices for other transactions in Commission regulated markets. Therefore, the Proposed Exemption should not have a material adverse effect on any contract market carrying out its self-regulatory function.

With respect to Energy Transactions, these transactions do have a relationship to Commission regulated markets because they can serve as a source of settlement prices for other transactions within Commission jurisdiction. Granting the Proposed Exemption, however, should not pose regulatory burdens on a contract market because, as discussed in more detail below, Petitioners have market monitoring systems in place to detect

Swap Participant’ and ‘Eligible Contract Participant,’” 77 FR 30596, May 23, 2012.

<sup>102</sup> See 7 U.S.C. 6(c)(3)(H) (“Any governmental entity \* \* \* including \* \* \* any state \* \* \* or political subdivision thereof \* \* \* or any instrumentality, agency or department of any of the foregoing.”)

<sup>103</sup> CEA 4(c)(2)(B).

<sup>104</sup> See H.R. No. 978, 102d Cong. 2d Sess. 79 (1992).

<sup>105</sup> See Petition at 28.

<sup>106</sup> See *id.* at 28.

<sup>107</sup> Nor did the Petitioners seek an exemption from these provisions. See *id.* at 2–3.

and deter manipulation that takes place on their markets. Also, as a condition of the Proposed Exemption, the Commission would be able to obtain data from FERC and PUCT with respect to activity on Petitioners' markets that may impact trading on Commission regulated markets.

Finally, the Commission notes that if the Transactions ever could be used in combination with trading activity or a position in a DCM contract to work some market abuse, both the Commission and DCMs have sufficient independent authority over DCM market participants to monitor for such activity.<sup>108</sup> Typically, cross-market abuse schemes will involve a reportable position in the DCM contract involved. In which case, Commission Regulation 18.05 requires the reportable trader to keep books and records evidencing all details concerning cash and over-the-counter positions and transactions in the underlying commodity and to provide such data to the Commission upon demand. Likewise, recently-adopted Commission regulation 38.254(a) requires that DCMs have rules that require traders to keep records of their trading, including records of their activity in the underlying commodity and related derivatives markets, and make such records available, upon request, to the DCM.<sup>109</sup>

The CFTC is requesting comment as to whether the Proposed Exemption will have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act, and, if so, what conditions can or should be imposed on the Order to mitigate such effects.

### C. FERC Credit Reform Policy

On October 21, 2010, FERC amended its regulations to encourage clear and consistent risk and credit practices in the organized wholesale electric markets to, *inter alia*, "ensure that all rates charged for the transmission or sale of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential."<sup>110</sup>

<sup>108</sup> The Commission notes that its authority to prosecute market abuses involving Transactions would not be limited to instances where Transactions were part of some cross-market scheme involving DCM trading activity.

<sup>109</sup> Final Rulemaking—Core Principles and Other Requirements for Designated Contract Markets, 72 FR 36612 (June 19, 2012).

<sup>110</sup> 75 FR 65942, 65942, Oct. 21, 2010 (the "FERC Original Order 741"). These requirements were later slightly amended and clarified in an order on rehearing. See 76 FR 10492, Feb. 25, 2011 ("FERC Revised Order 741", and together with Original Order 741, "FERC Order 741").

In effect, Order 741 requires those RTOs and ISOs that are subject to FERC supervision to implement the following reforms: "shortened settlement timeframes, restrictions on the use of unsecured credit, elimination of unsecured credit in all [FTRs] or equivalent markets, adoption of steps to address the risk that RTOs and ISOs may not be allowed to use netting and set-offs, establishment of minimum criteria for market participation, clarification regarding the organized markets' administrators' ability to invoke 'material adverse change' clauses to demand additional collateral from participants, and adoption of a two-day grace period for 'curing' collateral calls."<sup>111</sup> Unlike the other Petitioners, ERCOT is regulated by the PUCT, not FERC. As a result, ERCOT is not subject to the particular stringent credit and risk management standards set forth in Order 741. As discussed below regarding conditions precedent starting on page 103 *infra*, the Commission is proposing to require compliance with the standards of Order 741 by all Petitioners, including ERCOT, as a condition to issuing the Proposed Exemption.

As discussed in more detail below, particularly in section V.C., the requirements set forth in Order 741 appear to achieve goals similar to the regulatory objectives of the Commission's DCO Core Principles.

FERC regulation 35.47(c) calls for the elimination of unsecured credit in the financial transmission rights markets and equivalent markets.<sup>112</sup> This requirement appears to be congruent with Core Principle D's requirement that each DCO limit its exposure to potential losses from defaults by clearing members. Because, according to FERC, risks arising out of the FTR markets are "difficult to quantify,"<sup>113</sup> eliminating the use of unsecured credit in these markets may help avoid the unforeseen and substantial costs for an RTO or ISO in the event of a default.<sup>114</sup> Thus, the requirement set forth in regulation

<sup>111</sup> FERC Revised Order 741 at 10492–10493.

<sup>112</sup> 18 CFR 35.47(c).

<sup>113</sup> Specifically, FERC stated that "the risk associated with the potentially rapidly changing value of FTRs warrants adoption of risk management measures, including the elimination of unsecured credit. Because financial transmission rights have a longer-dated obligation to perform which can run from a month to a year or more, they have unique risks that distinguish them from other wholesale electric markets, and the value of a financial transmission right depends on unforeseeable events, including unplanned outages and unanticipated weather conditions. Moreover, financial transmission rights are relatively illiquid, adding to the inherent risk in their valuation."

FERC Original Order 741 at 65950.

<sup>114</sup> *Id.* at 65949.

35.47(c) appears to advance the objectives of Core Principle D by reducing risk and minimizing the effect of defaults through the elimination of unsecured credit in the FTR and equivalent markets.

In addition, FERC regulation 35.47(a) requires RTOs and ISOs to have tariff provisions that "[l]imit the amount of unsecured credit extended by [an RTO or ISO] to no more than \$50 million for each market participant."<sup>115</sup> This requirement appears to be congruent with one of the regulatory objectives of Core Principle D, as implemented by Commission Regulation 39.13, specifically the requirement that each DCO limit its exposure to potential losses from defaults by clearing members. In capping the use of unsecured credit at \$50 million, FERC stated its belief that RTOs and ISOs "could withstand a default of this magnitude by a single market participant,"<sup>116</sup> thereby limiting an RTO's or ISO's exposure to potential losses from defaults by its market participants. Thus, it seems both Core Principle D and FERC regulation 35.47(a) help protect the markets and their participants from unacceptable disruptions, albeit in different ways and to a different extent.

FERC regulation 35.47(b) mandates that RTOs and ISOs have billing periods and settlement periods of no more than seven days.<sup>117</sup> While this mandate does not meet the standards applicable to registered DCOs,<sup>118</sup> it supports Core Principle D's requirement that each DCO have appropriate tools and procedures to manage the risks associated with discharging its responsibilities. In promulgating FERC regulation 35.47(b), FERC found a shorter cycle necessary to promote market liquidity and a necessary change "to reduce default risk, the costs of which would be socialized across market participants and, in certain events, of market disruptions that could undermine overall market function."<sup>119</sup> Recognizing the correlation between a reduction in the length of the "settlement cycle" and a reduction in costs attributed to a default, FERC stated that shorter cycles reduce the amount of unpaid debt left outstanding, which, in

<sup>115</sup> In addition, FERC regulation 35.47(a) states that "where a corporate family includes more than one market participant participating in the same [RTO or ISO], the limit on the amount of unsecured credit extended by that [RTO or ISO] shall be no more than \$50 million for the corporate family." 18 CFR 35.47(a).

<sup>116</sup> FERC Original Order 741 at 65948.

<sup>117</sup> 18 CFR 35.47(b).

<sup>118</sup> See 17 CFR 39.14(b) (requiring daily settlements).

<sup>119</sup> FERC Original Order 741 at 65946.

turn, reduces “the size of any default and therefore reduces the likelihood of the default leading to a disruption in the market such as cascading defaults and dramatically reduced market liquidity.”<sup>120</sup> Thus, FERC regulation 35.47(b) appears to aid RTOs and ISOs in managing the risks associated with their responsibilities, which also appears to support Core Principle D’s goals.

FERC regulation 35.47(d) requires RTOs and ISOs to ensure the enforceability of their netting arrangements in the event of the insolvency of a member by doing one of the following: (1) Establish a single counterparty to all market participant transactions, (2) require each market participant to grant a security interest in the receivables of its transactions to the relevant RTO or ISO, or (3) provide another method of supporting netting that provides a similar level of protection to the market that is approved by FERC.<sup>121</sup> In the alternative, the RTOs and ISOs would be prohibited from netting market participants’ transactions, and required to establish credit based on each market participant’s gross obligations. Congruent to the regulatory objectives of Core Principles D and G, FERC regulation 35.47(d) attempts to ensure that, in the event of a bankruptcy of a participant, ISOs/RTOs are not prohibited from offsetting accounts receivable against accounts payable. In effect, this requirement attempts to clarify an ISO’s or RTO’s legal status to take title to transactions in an effort to establish mutuality in the transactions as legal support for set-off in bankruptcy.<sup>122</sup> This clarification, in turn, would appear to limit an RTO’s or ISO’s exposure to potential losses from defaults by market participants.

FERC regulation 35.47(e) limits the time period within which a market participant must cure a collateral call to no more than two days.<sup>123</sup> This requirement appears to be congruent with Core Principle D’s requirement that each DCO limit its exposure to potential losses from defaults by clearing members. In Original Order 741, FERC stated that a two day time period for curing collateral calls balances (1) the need for granting market participants sufficient time to make funding arrangements for collateral calls with (2) the need to minimize uncertainty as to

a participant’s ability to participate in the market, as well as the risk and costs of a default by a participant. By requiring each ISO and RTO to include this two day cure period in the credit provisions of its tariff language, FERC regulation 35.47(e) appears to both promote the active management of risks associated with the discharge of an RTO’s or ISO’s responsibilities, while at the same time limiting the potential losses from defaults by market participants.

FERC regulation 35.47(f) imposes minimum market participant eligibility requirements that apply consistently to all market participants and, as set forth in the preamble to Original Order 741, requires RTOs and ISOs to engage in periodic verification of market participant risk management policies and procedures.<sup>124</sup> The Commission believes that the requirements set forth in FERC regulation 35.47(f) appear congruent with some of the regulatory objectives of DCO Core Principle C, as implemented by Commission regulation 39.12. In general, DCO Core Principle C requires each DCO to establish appropriate admission and continuing eligibility standards for members of, and participants in, a DCO that are objective, publicly disclosed, and permit fair and open access.<sup>125</sup> In addition, Core Principle C also requires that each DCO establish and implement procedures to verify compliance with each participation and membership requirement, on an ongoing basis.<sup>126</sup> Similarly, while FERC regulation 35.47(f) does not prescribe the particular participation standards that must be implemented, as suggested in the preamble to Original Order 741, these standards should address “adequate capitalization, the ability to respond to ISO/RTO direction and expertise in risk management”<sup>127</sup> and ensure that proposed tariff language “is just and reasonable and not unduly discriminatory.”<sup>128</sup> Moreover, FERC specifically stated that these participation standards “could include the capability to engage in risk management or hedging or to out-source this capability with periodic compliance verification, to make sure that each market participant has adequate risk management capabilities and adequate capital to engage in trading with minimal risk, and related costs, to the market as a whole.”<sup>129</sup> Thus, both DCO

Core Principle C and Order 741 appear to promote fair and open access for market participants as well as impose compliance verification requirements.

FERC regulation 35.47(g) requires ISOs and RTOs to specify in their tariffs the conditions under which they will request additional collateral due to a material adverse change.<sup>130</sup> FERC, however, noted that the examples set forth in each ISO’s or RTO’s tariffs are not exhaustive and that ISOs and RTOs are permitted to use “their discretion to request additional collateral in response to unusual or unforeseen circumstances.”<sup>131</sup> The Commission believes that the requirements set forth in FERC regulation 35.47(g) appear congruent with the following DCO Core Principle D requirements: (1) That DCOs have appropriate tools and procedures to manage the risks associated with discharging its responsibilities, and (2) that DCOs limit their exposure to potential losses from defaults by clearing members.<sup>132</sup> By requiring ISOs and RTOs to actively consider the circumstances that could give rise to a material adverse change, FERC appears to be encouraging RTOs and ISO to actively manage their risks to “avoid any confusion, particularly during times of market duress, as to when such a clause may be invoked.”<sup>133</sup> Moreover, such clarification could prevent a market participant’s ability to “exploit ambiguity as to when a market administrator may invoke a ‘material adverse change,’ or a market administrator may be uncertain as to when it may invoke a ‘material adverse change,’”<sup>134</sup> thereby avoiding potentially harmful delays or disruptions that could subject the RTOs and ISOs to unnecessary damage.

As such, on the basis of the representations contained in the Petition, including the fact that, as discussed in further detail below,<sup>135</sup> the Commission is considering whether to require each Petitioner, including ERCOT, to comply with, and fully implement, the requirements set forth in Order 741 as a prerequisite to the granting of a limited 4(c)(6) exemption for the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

<sup>120</sup> *Id.*

<sup>121</sup> 18 CFR 35.47(d).

<sup>122</sup> See 11 U.S.C. 553; see generally *In re SemCrude, L.P.*, 399 B.R. 388 (Bankr. D. Del. 2009), *aff’d*, 428 B.R. 590 (D. Del. 2010).

<sup>123</sup> 18 CFR 35.47(e).

<sup>124</sup> 18 CFR 35.47(f).

<sup>125</sup> 7 U.S.C. 7a–1(c)(2)(C).

<sup>126</sup> *Id.*

<sup>127</sup> FERC Original Order 741 at 65956.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> 18 CFR 35.47(g).

<sup>131</sup> FERC Original Order 741 at 65957.

<sup>132</sup> 7 U.S.C. 7a 1(c)(2)(D).

<sup>133</sup> FERC Original Order 741 at 65958.

<sup>134</sup> *Id.*

<sup>135</sup> See *infra* text at n. 398.

### D. DCO Core Principle Analysis

#### 1. DCO Core Principle A: Compliance With Core Principles

Core Principle A requires a DCO to comply with each core principle set forth in section 5b(c)(2) of the CEA, as well as any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the Act for a DCO to be registered and maintain its registration.<sup>136</sup> In addition, Core Principle A states that a DCO shall have reasonable discretion in establishing the manner by which it complies with each core principle subject to any rule or regulation prescribed by the Commission.<sup>137</sup>

Petitioners represent that, although they are principally regulated by FERC and PUCT and that there are differences between Petitioners and registered DCOs, Petitioners' practices are consistent with the core principles for DCOs.<sup>138</sup> Petitioners represent that, though their methods are different than those employed by a registered DCO, their practices achieve the goals of, and are consistent with, the policies of the Act.<sup>139</sup> Based upon Petitioners' representations and the core principle discussions below, and in the context of the Petitioners' activities with respect to the Transactions within the scope of this Proposed Exemption, Petitioners' practices appear congruent with, and to accomplish sufficiently, the regulatory objectives of each DCO core principle. The Commission seeks comment with respect to this preliminary conclusion.

#### 2. DCO Core Principle B: Financial and Operational Resources

Core Principle B requires a DCO to have adequate financial, operational, and managerial resources to discharge each of its responsibilities.<sup>140</sup> In addition, a DCO must have financial resources that, at a minimum, exceed the total amount that would: (i) Enable the DCO to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions; and (ii) enable the DCO to cover its operating costs for a period of 1 year, as calculated on a rolling basis.<sup>141</sup>

##### a. Financial Resources

Petitioners represent that they maintain sufficient financial resources

to meet their financial obligations to their members notwithstanding a default by the member creating the largest financial exposure for that organization in extreme but plausible market conditions.<sup>142</sup> As an initial matter, Petitioners apply the defaulting market participant's collateral to the outstanding obligation.<sup>143</sup> Further, if the collateral is inadequate to cover the obligation, Petitioners' tariffs permit them to charge the loss to non-defaulting market participants.<sup>144</sup> For some Petitioners, other resources are available. For example, one Petitioner represents that it has the ability to draw upon its working capital fund and/or its revolving credit facility to ensure that market participants are paid in full.<sup>145</sup> Another Petitioner states that defaults are socialized after realizing any collateral specific to the defaulting participant, claims paid by third-party default insurance, funds from accrued collected penalties for Late Payment Accounts, and, for liquidity purposes, third-party financing.<sup>146</sup>

In the event that a default occurs and there is inadequate collateral for a particular participant, the Petitioners' represent that the deficiencies would be addressed by mutualization among the non-defaulting participants to whom the Petitioner would otherwise be obligated, allocated pursuant to a pre-determined formula that is included in each Petitioner's tariff.<sup>147</sup> This process is often referred to as "short-paying."<sup>148</sup> Once the amount of the default is deemed to be uncollectible [by the Petitioner], the short-pay would, in some cases, be "uplifted" or "socialized" across the market, with the losses reallocated among all non-defaulting participants.<sup>149</sup>

On the basis of these representations, the Commission believes that each Petitioner's financial resource

<sup>142</sup> See Petition Attachments at 3–20.

<sup>143</sup> See, e.g., *id.* at 4, 8–9, 10, 15, 20.

<sup>144</sup> See *id.* at 4, 8, 10, 13, 15, 20.

<sup>145</sup> See *id.* at 15. The Commission notes Regulation 39.11(b) includes the following as financial resources eligible to satisfy a DCO's requirement to have sufficient financial resources to cover a default by the member creating the largest financial exposure: (a) Margin, (b) the DCO's own capital, (c) guaranty fund deposits, (d) default insurance, (e) potential assessments for additional guaranty fund contributions, if permitted by the DCO's rules, and (f) any other financial resource deemed acceptable by the Commission. See 17 CFR 39.11(b)(1). The Commission notes that the revolving credit facility cited by NYISO would not satisfy the financial resource requirement, but would be considered in determining liquidity. See 17 CFR 39.11(e)(1)(iii).

<sup>146</sup> See Petition Attachments at 10–11.

<sup>147</sup> See, e.g., *id.* at 9, 13.

<sup>148</sup> See, e.g., *id.* at 15.

<sup>149</sup> See, e.g., *id.* at 9, 13.

requirements appear to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle B in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

##### b. Operational Resources

Each Petitioner represents that it has sufficient operational resources to cover its operating costs through a charge allocated to its participants and set forth in its Tariffs, which are approved by FERC and PUCT, as applicable.<sup>150</sup> Petitioners represent that the charge is based on expected costs for the following year.<sup>151</sup> Under the regulatory structure in the wholesale electric industry, market participants are obligated to pay the fees required by the Petitioners,<sup>152</sup> and are thus, in a sense, a "captive audience." Moreover, since market participant defaults are mutualized amongst the non-defaulting participants,<sup>153</sup> Petitioners represent that such defaults would not impair their ability to cover their operating costs, because the Petitioners would continue to collect sufficient funds from all other market participants to pay such operating expenses.<sup>154</sup> Therefore, these policies and procedures appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle B in the context of the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

##### c. Managerial Resources

Each of the Petitioners represents that it has adequate managerial resources to discharge its responsibilities as an organized wholesale electricity market.<sup>155</sup> The Commission notes that FERC Order No. 888 sets forth the principles used by FERC to assess ISO proposals and requires that ISOs have appropriate incentives for efficient management and administration.<sup>156</sup> This requirement provides that ISOs should procure the services needed for such management and administration in an open competitive market, similar to how Core Principle B requires a DCO to possess managerial resources necessary

<sup>150</sup> See *id.* at 3–20. Some Petitioners state that the charge is allocated to their market participants based on the level of their usage of the Petitioner's services or on the volume of their market transactions. See, e.g., *id.* at 4, 13, and 20.

<sup>151</sup> See, e.g., *id.* at 4, 10, 16.

<sup>152</sup> See, e.g., *id.* at 16, 20.

<sup>153</sup> See *id.* at 4–20.

<sup>154</sup> See *id.* at 16.

<sup>155</sup> See *id.* at 3–20.

<sup>156</sup> See generally FERC Order 888 at 21540.

<sup>136</sup> 7 U.S.C. 7a–1(c)(2)(A)(i).

<sup>137</sup> 7 U.S.C. 7a–1(c)(2)(A)(ii).

<sup>138</sup> Petition Attachments at 1.

<sup>139</sup> *Id.*

<sup>140</sup> 7 U.S.C. 7a–1(c)(2)(B)(i).

<sup>141</sup> 7 U.S.C. 7a–1(c)(2)(B)(ii).

to discharge each responsibility of the DCO. Similarly, with respect to ERCOT, PUCT's Substantive Rules require that ERCOT's Enterprise Risk Management Group has adequate resources to perform its functions, which includes assessing market participant creditworthiness.<sup>157</sup>

In addition, FERC Order No. 2000 requires that RTOs have an open architecture so that the RTO and its members have the flexibility to improve their organizations in the future in terms of structure, geographic scope, market support and operations in order to adapt to an environment that is rapidly changing and meet market needs.<sup>158</sup>

Petitioners represent that they maintain the staff and labor necessary to fulfill their obligations and responsibilities, and only employ persons who are appropriately qualified, skilled and experienced in their respective trades or occupations.<sup>159</sup> Based on these representations, the Petitioners' managerial resources appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle B in the context of the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

### 3. DCO Core Principle C: Participant and Product Eligibility

DCO Core Principle C requires each DCO to establish appropriate admission and continuing eligibility standards for member and participants (including sufficient financial resources and operational capacity), as well as to establish procedures to verify, on an ongoing basis, member and participant compliance with such requirements.<sup>160</sup> The DCO's participant and membership requirements must also be objective, be publicly disclosed, and permit fair and open access.<sup>161</sup> In addition, Core Principle C obligates each DCO to establish appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing.<sup>162</sup>

#### a. FERC Credit Policy Requirements

As discussed above, the FERC Credit Policy appears to impose participant

eligibility requirements that are consistent with regulatory objectives of DCO Core Principle C.<sup>163</sup> In the FERC Credit Policy, FERC notes that "[h]aving minimum criteria in place can help minimize the dangers of mutualized defaults posed by inadequately prepared or under-capitalized participants."<sup>164</sup> Specifically, FERC regulation 35.47(f) requires organized wholesale electric markets to adopt tariff provisions that require minimum market participant eligibility criteria.<sup>165</sup> Though the regulation does not prescribe the particular participation standards that must be implemented; in the rule's preamble, FERC suggests that such standards should address "adequate capitalization, the ability to respond to ISO/RTO direction and expertise in risk management."<sup>166</sup> Regarding risk management, FERC further suggests that minimum participant eligibility criteria should "include the capability to engage in risk management or hedging or to out-source this capability with periodic compliance verification."<sup>167</sup> Although market participant criteria may vary among different types of market participants, all market participants must be subject to some minimum criteria.<sup>168</sup> An RTO or ISO subject to FERC's supervision is obligated to establish market participant criteria, even if the RTO or ISO applies vigorous standards in determining the creditworthiness of its market participants.<sup>169</sup>

Because the minimum participation criteria that will be adopted by Petitioners will be included in their respective tariffs, which are publicly available on each Petitioner's Web site, such criteria will be publicly disclosed.

<sup>163</sup> See, *supra* n. 127 and accompanying text.

<sup>164</sup> FERC Original Order 741 at 665955.

<sup>165</sup> 18 CFR 35.47(f).

<sup>166</sup> FERC Original Order 741 at 665956.

<sup>167</sup> *Id.*

<sup>168</sup> Although the FERC Credit Policy states that FERC "directs that [the market participation criteria] apply to all market participants rather than only certain participants," FERC clarified this comment in its Order of Rehearing by stating that its intent "was that there be minimum criteria for all market participants and not that all market participants necessarily be held to the same criteria" based upon, for example, the size of the participant's positions. See FERC Revised Order 741 at n. 43. This approach appears to be consistent with Commission regulation 39.12, which implements Core Principle C and requires that participation requirements for DCO members be risk-based.

<sup>169</sup> See FERC Original Order 741 at 665956 (noting that "An ISO or RTO's 'ability to accurately assess a market participant's creditworthiness is not infallible' and '[w]hile an analysis of creditworthiness may capture whether the market participant has adequate capital, it may not capture other risks, such as whether the market participant has adequate expertise to transact in an RTO/ISO market.'").

In addition, FERC notes that it reviews proposed tariff language "to ensure that it is just and reasonable and not unduly discriminatory,"<sup>170</sup> which practice would appear to be consistent with DCO Core Principle C's directive that market participation standards permit fair and open access.

#### b. The Petitioners' Representations

Each Petitioner represents that it either has adopted minimum participant eligibility criteria or is in the process of establishing minimum participant eligibility criteria<sup>171</sup> that include capitalization requirements (which may provide for the posting of additional collateral by less-well-capitalized members). The capitalization requirements appear to be risk-based in that the requirements may vary by type of market and/or type or size of participant.<sup>172</sup> In addition, some Petitioners require that participants in certain markets satisfy specified credit requirements,<sup>173</sup> as well as standards related to risk management,<sup>174</sup> training and testing,<sup>175</sup> and the disclosure of material litigation or regulatory sanctions, bankruptcies, mergers, acquisitions, and activities in the wholesale electricity market.<sup>176</sup> Petitioners also represent that they impose operational capability requirements,<sup>177</sup> and either maintain tariffs, or have filed proposed amendments to their existing tariffs, that incorporate requirements that would enable Petitioners to periodically verify the risk management standards and procedures of market participants.<sup>178</sup> This verification may be required on either a random basis or based upon identified risks. Furthermore, some Petitioners require attestations of continued compliance with other elements of their participation eligibility criteria.<sup>179</sup>

<sup>170</sup> *Id.*

<sup>171</sup> See Petition Attachments at 22–54.

<sup>172</sup> See *id.* at 22–54.

<sup>173</sup> See, e.g., *id.* at 22 (CAISO requires CRR holders to have a minimum amount of available credit in order to participate in a CRR auction).

<sup>174</sup> See *id.* at 23, 35, 44–45.

<sup>175</sup> See *id.* at 22, 35, 44.

<sup>176</sup> See *id.* at 33.

<sup>177</sup> See *id.* at 23, 37–38, 39, 48.

<sup>178</sup> See *id.* at 23, 35–36, 38, 44–45, 49.

<sup>179</sup> For example, CAISO requires market participants to attest annually that they satisfy CAISO's minimum participation requirements related to capitalization, training and the operational capability to comply with CAISO's direction. See *id.* at 23. Similarly, ISO NE requires that each market participant annually submit a certificate that attests that the participant has procedures to effectively communicate with ISO NE and that it has trained personnel related to its participation in the relevant markets. See *id.* at 35.

<sup>157</sup> P.U.C. SUBST. R. 25.361(b). See also Petition Attachments at 7–8.

<sup>158</sup> *Id.* at 502.

<sup>159</sup> See Petition Attachments at 3–20.

<sup>160</sup> 7 U.S.C. 7a–1(c)(2)(C).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* As set forth above, the exemption that would be provided by the Proposed Exemption would be available only with respect to the transactions specifically delineated therein. Accordingly, the DCO Core Principle C analysis is limited to a discussion of the Petitioners' participant eligibility requirements.

ERCOT asserts that it is in the process of developing new eligibility requirements through its stakeholder process, that, as proposed, would require relevant market participants to (i) satisfy minimum capitalization requirements or post additional security, (ii) have appropriate expertise in the market, (iii) maintain a risk management framework appropriate to the ERCOT markets in which it transacts, (iv) have appropriate operational capability to respond to ERCOT direction, and (v) have the market participant's officer certify, on an annual basis, that the participant eligibility requirements are met.<sup>180</sup>

It appears from the foregoing that Petitioners' arrangements with respect to participant eligibility requirements are (or will be) congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle C in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 4. DCO Core Principle D: Risk Management

DCO Core Principle D requires each DCO to demonstrate the ability to manage the risks associated with discharging the responsibilities of a DCO through the use of appropriate tools and procedures.<sup>181</sup> As amended by the Dodd-Frank Act, Core Principle D also requires a DCO to: (1) Measure and monitor its credit exposures to each clearing member daily; (2) through margin requirements and other risk control mechanisms, limit its exposure to potential losses from a clearing member default; (3) require sufficient margin from its clearing members to cover potential exposures in normal market conditions; and (4) use risk-based models and parameters in setting margin requirements that are reviewed on a regular basis.<sup>182</sup>

##### a. Risk Management Framework

Each Petitioner represents that it has established policies and procedures designed to minimize risk.<sup>183</sup> As part of the tools and procedures that RTOs and ISOs use to manage the risks associated with their activities, FERC regulation 35.47(b) mandates that RTOs and ISOs

have billing periods and settlement periods of no more than seven days.<sup>184</sup> As discussed above, FERC found a shorter cycle necessary to promote market liquidity and a necessary change "to reduce default risk, the costs of which would be socialized across market participants and, in certain events, of market disruptions that could undermine overall market function."<sup>185</sup> Recognizing the correlation between a reduction in the "settlement cycle" and a reduction in costs attributed to a default, FERC stated that shorter cycles reduce the amount of unpaid debt left outstanding, which, in turn, reduces "the size of any default and therefore reduces the likelihood of the default leading to a disruption in the market such as cascading defaults and dramatically reduced market liquidity."<sup>186</sup> Most of the Petitioners represent that they have, or expect to have, final tariffs in place that limit billing periods and settlement periods to no more than seven days.<sup>187</sup>

In addition, an ISO's or RTO's participation standards can include the supervision of a market participant's risk management program.<sup>188</sup> As discussed in section V.C., FERC Order 741 states that an ISO or RTO could include periodic verification of market participant's capability to engage in risk management or hedging or to out-source that capability "to make sure each market participant has adequate risk management capabilities and adequate capital to engage in trading with minimal risk, and related costs, to the market as a whole."<sup>189</sup> Each Petitioner regulated by FERC represents that it either has a verification program in place or has submitted necessary Tariffs for approval to establish a verification program.<sup>190</sup> ERCOT also has proposed participant eligibility requirements that would subject participants' risk management framework to verification by ERCOT, unless that framework has been deemed sufficient for transacting in another U.S. RTO or ISO market in accordance with a FERC-approved tariff or in accordance with the Federal Reserve Bank Holding Company Supervision Manual. The proposed requirements currently are under review

in the ERCOT stakeholder process.<sup>191</sup> On the basis of the representations contained in the Petition, it appears that these policies and procedures, are (or will be, assuming they are implemented) congruent with, and will sufficiently accomplish, the regulatory objectives of DCO Core Principle D. The Commission seeks comment with respect to this conclusion.

##### b. Measurement and Monitoring of Credit Exposure

Petitioners represent that their risk management procedures measure, monitor, and mitigate their credit exposure to market participants.<sup>192</sup> In addition, most Petitioners state that they calculate credit exposure daily.<sup>193</sup> It appears that, for the most part, given the unique characteristics of the wholesale electric markets, and particularly those of the FTR and equivalent markets, the practices specified in the Petition appear congruent with, and to accomplish sufficiently, DCO Core Principle D's objective that a DCO measure its credit exposure to each of its clearing members. The Commission seeks comment with respect to this preliminary conclusion, including comment on whether any different or additional practices should be implemented as a condition of issuance of the Proposed Exemption.

##### c. Unsecured Credit

Petitioners represent that a market participant is required to obtain unsecured credit lines from an RTO or ISO (limited as discussed below) and/or post financial security that is sufficient to meet the participant's estimated aggregate liability<sup>194</sup> or financial obligations.<sup>195</sup> FERC regulation 35.47(a)

<sup>191</sup> *Id.*

<sup>192</sup> See Petition Attachments at 56–92.

<sup>193</sup> See *id.* Petitioners further represent that the value of exposure to FTRs is determined by the price of physical electricity during the days and hours for which the FTR is effective. See *id.* In addition, petitioners represent that CAISO updates credit exposures for CRR's that are expected to generate a charge to the CRR holder on at least a monthly basis. See *id.* at 59–60. But see *id.* at 84–85 (representing that PJM calculates credit exposure for FTRs on a monthly basis because daily measurement and intraday monitoring of credit exposure is not practical for FTRs due to the low liquidity and other unique attributes of the FTR markets).

<sup>194</sup> A participant's estimated credit exposure to an RTO or ISO is called such participant's estimated aggregate liability or "EAL." The EAL calculation is based on a number of variables, which vary among Petitioners. See *id.* at 56–92.

<sup>195</sup> The Commission notes that NYISO establishes separate credit requirements for each of its product and service categories and requires each Market Participant to maintain financial security (e.g., cash, letter of credit, or surety bond) that is sufficient at

<sup>180</sup> See Petition Attachments at 27. See also FERC Order 741 Implementation Chart filed by petitioners as a supplement to the Petition (herein after, "FERC Order 741 Implementation Chart"), available at <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/iso-to4cappferchart.pdf>.

<sup>181</sup> 7 U.S.C. 7a–1(c)(2)(D).

<sup>182</sup> 7 U.S.C. 7a–1(c)(2)(D).

<sup>183</sup> See Petition Attachments at 56–92.

<sup>184</sup> 18 CFR 35.47(b).

<sup>185</sup> FERC Original Order 741 at 65946.

<sup>186</sup> *Id.*

<sup>187</sup> See FERC Order 741 Implementation Chart. As stated above, ERCOT is not required, by law, to comply with Order 741. Nonetheless, Petitioners represent that ERCOT will shorten its payment and settlement cycle to no more than 15 days. See *infra* nn. 212–213 and accompanying text.

<sup>188</sup> See n. 126 and accompanying text.

<sup>189</sup> See FERC Original Order 741 at 65946.

<sup>190</sup> See FERC Order 741 Implementation Chart at 11–12.

requires RTOs and ISOs to have tariff provisions that “[l]imit the amount of unsecured credit extended by [an RTO or ISO] to no more than \$50 million for each market participant.” As mentioned above,<sup>196</sup> in capping the use of unsecured credit at \$50 million, FERC stated its belief that RTOs and ISOs “could withstand a default of this magnitude by a single market participant,” therein limiting an RTO’s or ISO’s exposure to potential losses from defaults by its market participants. Petitioners represent that they have tariff provisions that comply with FERC regulation 35.47(a).<sup>197</sup> Moreover, FERC regulation 35.47(c) prohibits the use of unsecured credit in the FTR markets and equivalent markets because, according to FERC, risks arising out of the FTR markets are “difficult to quantify,” and eliminating the use of unsecured credit in these markets avoids the unforeseen and substantial costs for an RTO or ISO in the event of a default. Petitioners state that they have in place or have proposed tariff revisions to comply with FERC regulation 35.47(c).<sup>198</sup>

Since FERC regulations 35.47(a) and 35.47(c) appear to manage risk and limit an RTO’s or ISO’s exposure to potential losses from a market participant, these requirements would appear to be congruent with, and, assuming Petitioners’ proposed tariff revisions are implemented, to accomplish sufficiently, the regulatory objectives of Core Principle D in the context of Petitioners’ activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### d. Limiting Exposure to Potential Losses Through Use of Risk Control Mechanisms and Grace Period To Cure

Each Petitioner represents that it requires a market participant to post additional financial security (collateral) whenever the participant’s estimated aggregate liability or credit exposure equals or exceeds that participant’s unsecured credit and posted financial security.<sup>199</sup> Moreover, FERC regulation 35.47(e) limits the time period by which a market participant must cure a collateral call to no more than two days. In Original Order 741, FERC stated that a two day time period for curing collateral calls balances the need for granting market participants sufficient

all times to meet each separate credit requirement. *See id.* at 84.

<sup>196</sup> *See supra* at n. 115.

<sup>197</sup> *See* FERC Order 741 Implementation Chart at 2–3.

<sup>198</sup> *See id.* at 4–5.

<sup>199</sup> *See* Petition Attachments at 56–92.

time to make funding arrangements for collateral calls with the need to minimize uncertainty as to a participant’s ability to participate in the market as well as the risk and costs of a default by a participant. By requiring each RTO and ISO to include this two day cure period in its tariff provisions, FERC regulation 35.47(e) appears to both promote the active management of risks associated with the discharge of an RTO’s or ISO’s responsibilities, while at the same time limiting the potential losses from defaults by market participants. Petitioners represent that each of them has implemented this requirement.<sup>200</sup> In the event that a market participant fails to post additional financial security in response to a request from an RTO or ISO, or fails to do so within the requisite two day period, Petitioners represent that they have a wide array of remedies available, including bringing an enforcement action and assessing a variety of sanctions against the market participant.<sup>201</sup> On the basis of these representations, it appears that the requirements to post additional financial security and cure collateral calls in no more than two days help Petitioners manage risk and limit their exposure against potential losses from a market participant. These requirements appear to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle D in the context of Petitioners’ activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### e. Calls for Additional Collateral due to a Material Adverse Change

FERC regulation 35.47(g) requires ISOs and RTOs to specify in their tariffs the conditions under which they will request additional collateral due to a material adverse change. However, as stated by FERC, this list of conditions is not meant to be exhaustive, and ISOs and RTOs are permitted to use “their discretion to request additional collateral in response to unusual or unforeseen circumstances.”<sup>202</sup> Petitioners represent that they have tariffs that comply with these requirements.<sup>203</sup> Since Petitioners do not appear to be limited in their ability to call for additional collateral in unusual or unforeseen circumstances, FERC regulation 35.47(g) appears to

<sup>200</sup> *See* FERC Order 741 Implementation Chart at 7.

<sup>201</sup> *See, e.g.,* Petition Attachments at 56–57, 69–70, 76–77.

<sup>202</sup> FERC Original Order 741 at 65957.

<sup>203</sup> *See* FERC Order 741 Implementation Chart.

support some of DCO Core Principle D’s objectives, namely that a DCO have appropriate tools and procedures to manage the risks associated with discharging its responsibilities, and that a DCO limit its exposure to potential losses from defaults by clearing members. FERC has noted that information regarding when an ISO or RTO will request additional collateral due to a material adverse change may help to “avoid any confusion, particularly during times of market duress, as to when such a clause may be invoked,”<sup>204</sup> while at the same time preventing a market participant from “exploit[ing] ambiguity as to when a market administrator may invoke a ‘material adverse change.’”<sup>205</sup> As such, this policy appears to help avoid potentially harmful delays or disruptions that could subject the RTOs and ISOs to unnecessary damage, and thus is congruent with, and to accomplish sufficiently, the regulatory objectives of Core Principle D in the context of Petitioners’ activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### f. Margin Requirement and Use of Risk-Based Models and Parameters in Setting Margin

As discussed previously, Petitioners represent that each Petitioner requires that market participants maintain unsecured credit and/or post financial security (collectively, “margin”) that is sufficient to meet their estimated aggregate liability or financial obligations at all times,<sup>206</sup> although estimated aggregate liability calculations appear to vary among Petitioners and among products within a particular Petitioner’s markets.<sup>207</sup> As represented by Petitioners, these practices seem to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle D in the context of Petitioners’ activities with respect to the Transactions. The Commission seeks

<sup>204</sup> FERC Original Order 741 at 65958.

<sup>205</sup> *Id.* at 65958.

<sup>206</sup> *See* Petition Attachments at 56–92.

<sup>207</sup> For example, one Petitioner states that its margin requirements are calculated using historical data and estimates of potential future exposure for the purposes of minimizing default exposure, but notes that the mechanics of the potential future exposure estimates “vary depending on the market.” *See id.* at 77. It maintains customized approaches to margining particular market activity, including separate and distinct margining models for the FTR Market and the Forward Capacity Market (both the buy side and the sell side). *Id.* at 77–78 Similarly, another Petitioner states that its credit requirements are derived from historical data from the past three years for FTRs, but from the past one year for other transactions. *Id.* at 91–92.

comment with respect to this preliminary conclusion.

#### g. Ability To Offset Market Obligations

FERC regulation 35.47(d) requires RTOs and ISOs to either (1) establish a single counterparty to all market participant transactions, (2) require each market participant to grant a security interest in the receivables of its transactions to the relevant RTO or ISO, or (3) provide another method of supporting netting that provides a similar level of protection to the market that is approved by FERC. Otherwise, RTOs and ISOs are prohibited from netting market participants' transactions and required to establish credit based on market participants' gross obligations. FERC regulation 35.47(d), which attempts to ensure that, in the event of a bankruptcy, ISOs and RTOs are not prohibited from offsetting accounts receivable against accounts payable, is congruent with the regulatory objectives of Core Principle D. In effect, this requirement appears to attempt to clarify an ISO's or RTO's legal status to take title to transactions in an effort to establish mutuality in the transactions as legal support for set-off in bankruptcy.<sup>208</sup> This clarification, in turn, would seem to limit an RTO's or ISO's exposure to potential losses from defaults by market participants.

Petitioners have represented that they either are, or plan on becoming, central counterparties.<sup>209</sup> Though there appears to be strong support for the proposition that the central counterparty structure<sup>210</sup> would give rise to enforceable rights of setoff of the central counterparty, the Commission believes it would be in the public interest to have further clarity regarding whether a Petitioner's chosen approach to comply with FERC regulation 35.47(d) grants sufficient certainty regarding the ability to enforce setoff rights. As such, the Commission proposes that, as a prerequisite to the granting of the 4(c)(6) request, each Petitioner must submit a well-reasoned legal memorandum from, or a legal opinion of, outside counsel that, in the Commission's sole discretion, provides the Commission with adequate assurance that the approach selected by the Petitioner will in fact provide the Petitioner with set-off rights in a bankruptcy proceeding.

Subject to this condition, compliance with FERC regulation 35.47(d) appears

to be congruent with, and to accomplish sufficiently, Core Principle D's regulatory objectives in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion. The Commission also seeks comment with respect to the proposed prerequisite of assurance that the Petitioners can in fact exercise setoff rights in the event of the bankruptcy of a participant.

#### 5. DCO Core Principle E: Settlement Procedures

Among the requirements set forth by Core Principle E are the requirements that a DCO (a) have the ability to complete settlements on a timely basis under varying circumstances, and (b) maintain an adequate record of the flow of funds associated with each transaction that the DCO clears.<sup>211</sup>

Petitioners represent that they have policies and procedures that contain detailed procedures regarding data and record-keeping, and that, with the exception of ERCOT, they have, or will soon have, billing periods and settlement periods of no more than seven days each (for a total of 14 days).<sup>212</sup> ERCOT is in the process of implementing changes by which the weighted average billing and settlement cycle will be less than 15 days.<sup>213</sup> While this approach does not meet the standards applicable to registered DCOs,<sup>214</sup> it appears to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle E in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment on this preliminary conclusion.

#### 6. DCO Core Principle F: Treatment of Funds

Core Principle F requires a DCO to have standards and procedures designed to protect and ensure the safety of member and participant funds, to hold such funds in a manner that would minimize the risk of loss or delay in access by the DCO to the funds, and to invest such funds in instruments with minimal credit, market, and liquidity risks.<sup>215</sup>

Petitioners represent that they have tariff provisions and related governing

documents that accomplish the regulatory goals of DCO Core Principle F.<sup>216</sup> For example, CAISO represents that its tariffs require it to maintain specified types of separate accounts for funds it receives or holds, including segregated and aggregated market clearing accounts.<sup>217</sup> Similarly, MISO represents that its tariffs require MISO to hold all monies deposited by its participants (whom MISO refers to as "Tariff Customers") as financial assurance in a separate, interest-bearing money market account with one-hundred percent of the interest earned accruing to the benefit of the Tariff Customer.<sup>218</sup> The other Petitioners represent that they have appropriate investment policies or practices, such as segregation requirements and/or limitations on investment options.<sup>219</sup> As represented by Petitioners, these practices appear congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle F in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 7. DCO Core Principle G: Default Rules and Procedures

Core Principle G requires a DCO to have rules and procedures designed to allow for the efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the DCO.<sup>220</sup> Core Principle G also requires a DCO to clearly state its default procedures, make publicly available its default rules, and ensure that it may take timely action to contain losses and liquidity pressures and to continue meeting each of its obligations.<sup>221</sup>

##### a. General Default Procedures

Each Petitioner represents that it has procedures in its tariffs or other governing documents that address events surrounding the insolvency or default of a market participant.<sup>222</sup> For example, Petitioners represent that such documents identify events of default (e.g. failure to make payments when due, failure to support an estimated liability with adequate security, events of insolvency, and failure to perform other obligations under the tariff), describe the cure period associated with

<sup>211</sup> 7 U.S.C. 7a-1(d)(92)(i)-(ii).

<sup>212</sup> See Petition Attachments at 94-103.

<sup>213</sup> Under these arrangements, the time between Operating Day and payment will be 13 days or less for all transactions in the Day-Ahead Market, and will be 15 days or less for 90% of transactions in the Real Time Market. See *id.* at 96.

<sup>214</sup> See 17 CFR 39.14(b) (requiring daily settlements).

<sup>215</sup> 7 U.S.C. 7a-1(c)(2)(F).

<sup>216</sup> See Petition Attachments at 105-110.

<sup>217</sup> See *id.* at 105.

<sup>218</sup> See *id.* at 108.

<sup>219</sup> See *id.* at 105-110.

<sup>220</sup> 7 U.S.C. 7a-1(c)(2)(G)(i).

<sup>221</sup> 7 U.S.C. 7a-1(c)(2)(G)(ii).

<sup>222</sup> See generally Petition Attachments at 112-126.

<sup>208</sup> See *supra* n. 122.

<sup>209</sup> See FERC Order 741 Implementation Chart at 5-6.

<sup>210</sup> A central counterparty is, within a particular market, the buyer to every seller and the seller to every buyer. See *Principles for Financial Market Infrastructures* ¶ 1.13 (CPSS-IOSCO 2012).

an event of default, and describe the actions to be taken in the event of default and/or detail each Petitioners' remedies—which may include, among other things, termination of services and/or agreements, initiation of debt collection procedures and levying financial penalties.<sup>223</sup> As detailed above, in the event that the remedies outlined in each Petitioner's governing documents are insufficient to timely cure a default, Petitioners have the right to socialize losses from the default among other market participants by, for example, "short-paying" such other participants.<sup>224</sup>

#### b. Setoff

Generally speaking, it is a well-established tenet of clearing that a DCO acts as the buyer to every seller and as the seller to every buyer, thereby substituting the DCO's credit for bilateral counter-party risk. As such, when a DCO is involved, there is little question as to the identity of a counterparty to a given transaction. However, because ISOs and RTOs can act as agents for their participants, there could be ambiguity as to the identity of a counterparty to a given transaction. As a result, in the event of a bankruptcy of a market participant and in the event of a lack of the mutuality of obligation required by the Bankruptcy Code,<sup>225</sup> an ISO or RTO may be liable to pay a bankrupt market participant for transactions in which that participant is owed funds, without the ability to offset amounts owed by that participant with respect to other transactions. Stated differently, although the defaulting market participant may owe money to the ISO or RTO, if the ISO or RTO also owes money to such participant, the ISO or RTO may be required to pay the defaulting participant the full amount owed without being able to offset the amounts owed by that participant to the ISO or RTO, which latter amounts may be relegated to claims in the bankruptcy proceedings. As more fully described in section V.D.4.g., the requirement that Petitioners provide memoranda or opinions of counsel as discussed therein is intended to address this issue.

The foregoing arrangements appear congruent to, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle G in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 8. Core Principle H: Rule Enforcement

Core Principle H requires a DCO to (1) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and for resolution of disputes, (2) have the authority and ability to discipline, limit, suspend, or terminate a clearing member's activities for violations of those rules, and (3) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants.<sup>226</sup>

Each Petitioner represents that it maintains tariffs or procedures or is subject to a regulatory framework that accomplishes the regulatory goals of DCO Core Principle H. Petitioners have, e.g., the power to take a range of actions against participants that fail to pay, pay late, or fail to post financial security.<sup>227</sup>

Based on Petitioners' representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle H in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 9. DCO Core Principle I: System Safeguards

Core Principle I requires a DCO to demonstrate that: (1) It has established and will maintain a program of oversight and risk analysis to ensure that its automated systems function properly and have adequate capacity and security, and (2) it has established and will maintain emergency procedures and a plan for disaster recovery and will periodically test backup facilities to ensure daily processing, clearing and settlement of transactions.<sup>228</sup> Core Principle I also requires that a DCO establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of the DCO's operations and the fulfillment of each of its obligations and responsibilities.<sup>229</sup>

Petitioners represent that they have policies and procedures that accomplish the regulatory goals of DCO Core Principle I,<sup>230</sup> albeit in a manner that is somewhat different than the way in which a DCO complies with DCO Core Principle I. This is because Petitioners

are also responsible for managing power reliably and, thus, require additional operational safeguards to specifically address that function. For example, NYISO is subject to reliability rules established by the New York State Reliability Council, Northeast Power Coordinating Council, and the North American Electric Reliability Corporation.<sup>231</sup> In order to comply with these rules, NYISO has procedures in place to address emergency situations and maintains an alternate control center and back-up computer systems and data centers at a separate location.<sup>232</sup> NYISO also performs internal and external audits to ensure its internal controls, procedures, and business processes comply with accepted standards.<sup>233</sup> The other Petitioners represent that they have similar procedures and practices such as, computer back-up systems, operate multiple control and data centers, dedicate resources to internal audit and security teams, and maintain disaster recovery plans designed to address operational, physical, and cyber security events.<sup>234</sup>

Based on Petitioners' representations, it appears that these system safeguard practices are congruent with, and accomplish sufficiently, the regulatory objectives of DCO Core Principle I in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 10. DCO Core Principle J: Reporting

Core Principle J requires a DCO to provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the DCO.<sup>235</sup> With the exception of ERCOT, Petitioners represent that, pursuant to their Tariffs and other FERC orders, FERC has access to the information that it would need to oversee the Petitioners.<sup>236</sup> With respect to ERCOT, ERCOT represents that the PURA and PUCT Substantive Rules require it to provide information to the PUCT on request.<sup>237</sup> ERCOT also represents that its Bylaws require ERCOT corporate members to provide information to ERCOT.<sup>238</sup> In addition, according to ERCOT, the ERCOT Protocols require ERCOT to manage

<sup>231</sup> See *id.* at 157.

<sup>232</sup> See *id.*

<sup>233</sup> See *id.*

<sup>234</sup> See *id.* at 152, 156, 158.

<sup>235</sup> 7 U.S.C. 7a-1(c)(2)(I).

<sup>236</sup> See generally Petition Attachments at 160–166.

<sup>237</sup> See *id.* at 161–162. PURA 39.151(d), P.U.C. SUBST. R. 25.362(e)(1)(B) and 25.503(f)(8).

<sup>238</sup> See Petition Attachments at 161–162.

<sup>223</sup> *Id.*

<sup>224</sup> See *supra* at n. 149 and accompanying text. See also, e.g., Petition at 71.

<sup>225</sup> See 11 U.S.C. 553.

<sup>226</sup> 7 U.S.C. 7a-1(c)(2)(H).

<sup>227</sup> See generally, Petition Attachments at 128–150.

<sup>228</sup> 7 U.S.C. 7a-1(c)(2)(I)(i)–(ii).

<sup>229</sup> 7 U.S.C. 7a-1(c)(2)(I)(iii).

<sup>230</sup> See generally Petition Attachments at 152–158.

confidential information, but enable ERCOT to release confidential information to government officials if required by law, regulation or order.<sup>239</sup> As noted above, the Commission is proposing to condition this exemptive order on the completion of an appropriate information sharing agreement between the Commission and PUCT.

Based on the foregoing, including Petitioners' representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle J in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 11. Core Principle K: Recordkeeping

Core Principle K requires a DCO to maintain records of all activities related to its business as a DCO in a form and manner acceptable to the Commission for a period of not less than five years.<sup>240</sup>

Petitioners represent that their practices satisfy the regulatory goals of DCO Core Principle K because they have adequate recordkeeping requirements or systems.<sup>241</sup> In addition, Petitioners represent that FERC has comprehensive recordkeeping regulations that cover, among other things, protection and storage of records, record storage media, destruction of records, and premature destruction or loss of records.<sup>242</sup> The record retention requirements for accounting records are, in the main, at or in excess of five years.<sup>243</sup> In addition, ERCOT, which is not subject to FERC jurisdiction, represents that it has also adopted specific books and records requirements that accomplish the regulatory goals of DCO Core Principle K. Specifically, ERCOT represents that it has specific record retention rules established in the ERCOT Protocols and is required to retain market accounting information for a period of seven years.<sup>244</sup>

Based on these regulations and Petitioners' representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle K in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 12. DCO Core Principle L: Public Information

Core Principle L requires a DCO to make information concerning the rules and operating procedures governing its clearing and settlement systems (including default procedures) available to market participants.<sup>245</sup> Core Principle L also requires a DCO to provide market participants with sufficient information to enable them to identify and evaluate accurately the risks and costs associated with using the DCO's services, and to disclose publicly and to the Commission information concerning: (1) The terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; (2) the fees that the DCO charges its members and participants; (3) the DCO's margin-setting methodology, and the size and composition of its financial resources package; (4) daily settlement prices, volume, and open interest for each contract the DCO settles or clears; and (5) any other matter relevant to participation in the DCO's settlement and clearing activities.<sup>246</sup>

Each Petitioner represents that it makes its tariff or related governing documents publicly available on its Web site, which, in turn, allows market participants (and the public) to access its rules and procedures regarding, among other things, participant and product eligibility requirements, risk management methodologies, settlement procedures, and other information that may impact prices, such as transmission system models, reserved transmission capacity, and similar information.<sup>247</sup>

Based on Petitioners' representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle L in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 13. DCO Core Principle M: Information Sharing

Core Principle M requires a DCO to enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements, and use relevant information obtained from the agreements in carrying out the DCO's risk management program.<sup>248</sup>

Petitioners represent that they have policies and procedures that allow them

to share information with and receive information from other entities as necessary to carry out their risk management functions.<sup>249</sup> For example, ISO NE represents that its Information Policy sets out rules for sharing information with participants, FERC, and other Petitioners.<sup>250</sup> Similarly, the NYISO represents that its tariff provides for information sharing with other ISOs and RTOs.<sup>251</sup> ERCOT represents that it is likewise subject to a comprehensive set of rules under the PURA, PUCT Rules, and the ERCOT Protocols that address information exchange obligations between ERCOT, the ERCOT Independent Market Monitor, ERCOT market participants, and the PUCT.<sup>252</sup> MISO, PJM, and CAISO all claim to have similar information sharing policies and procedures—although, the entities with which each ISO/RTO shares information do vary.<sup>253</sup>

Based on the foregoing and Petitioners' representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle M in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 14. DCO Core Principle N: Antitrust

Core Principle N requires a DCO to avoid, unless necessary or appropriate to achieve the purposes of the CEA, adopting any rule or taking any action that results in any unreasonable restraint of trade, or imposing any material anticompetitive burden.<sup>254</sup>

As discussed above, the formation of the Petitioners (except for ERCOT) was encouraged by FERC (pursuant to FERC Order Nos. 888 and 2000) in order to foster greater competition in the power generation sectors by allowing open access to transmission lines.<sup>255</sup> In

<sup>249</sup> See generally Petition Attachments at 184–190.

<sup>250</sup> See *id.* at 186.

<sup>251</sup> See *id.* at 188–189.

<sup>252</sup> See *id.* at 185.

<sup>253</sup> See *id.* at 184, 187, 190.

<sup>254</sup> 7 U.S.C. 7a–1(c)(2)(N).

<sup>255</sup> See FERC Order No. 888; FERC Order No. 2000. Moreover, Petitioners represent that their rules are typically subject to advance review by stakeholders and must be approved by FERC (except for ERCOT whose rules are approved by PUCT). These rules are, in turn, subject to review by the MMU, who attempt to detect, among other things, detect market power abuses. See generally Petition Attachments at 192–198. With respect to ERCOT, TAC 25.361(i) expressly states that “The existence of ERCOT is not intended to affect the application of any state or federal anti-trust laws.” In addition, ERCOT represents that it conducts antitrust training for its employees annually, holds open meetings to promote the transparent development of market rules, established a

<sup>239</sup> See *id.*

<sup>240</sup> 7 U.S.C. 7a–1(c)(2)(K).

<sup>241</sup> See generally Petition Attachments at 168–173.

<sup>242</sup> See 18 CFR 125.2–3.

<sup>243</sup> See 18 CFR 125.3 at (6)–(9).

<sup>244</sup> See Petition Attachments at 169.

<sup>245</sup> 7 U.S.C. 7a–1(c)(2)(L)(i)–(ii).

<sup>246</sup> 7 U.S.C. 7a–1(c)(2)(L)(iii).

<sup>247</sup> See generally Petition Attachments at 175–182.

<sup>248</sup> 7 U.S.C. 7a–1(c)(2)(M).

addition, Petitioners represent that they are subject to continued oversight by FERC, PUCT or their market monitors, as appropriate, which oversight could detect activities such as undue concentrations or market power, discriminatory treatment of market participants or other anticompetitive behavior.<sup>256</sup>

Based on Petitioners' representations, it appears that Petitioners' existence and practices are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle N. The Commission seeks comment with respect to this preliminary conclusion.

#### 15. DCO Core Principle O: Governance and Fitness Standards

Core Principle O requires a DCO to establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants.<sup>257</sup> A DCO must also establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the DCO, any other individual or entity with direct access to the settlement or clearing activities of the DCO, and any party affiliated with any of the foregoing individuals or entities.<sup>258</sup>

Petitioners represent that their tariffs, organizational documents, and applicable state law set forth specific governance standards that are consistent with the regulatory goals which address, for example, director independence and fitness requirements.<sup>259</sup> In addition, Petitioners assert that FERC Order Nos. 888 and 2000 set out certain minimum governance structures for ISOs and RTOs. Petitioners state that Order No. 888 requires the following: an ISO's governance should be structured in a fair and non-discriminatory manner; an ISO and its employees should have no financial interest in the economic performance of any power market participant; and an ISO should adopt and enforce strict conflict of interest standards.<sup>260</sup> Petitioners assert that Order No. 2000 likewise identified minimum characteristics that RTOs must exhibit, including, independence

from all market participants.<sup>261</sup> Similarly, Petitioners represent that PURA mandates ERCOT to include unaffiliated directors and market segment representation in its governance structure.<sup>262</sup>

Based on Petitioners' representations, it appears that Petitioner's governance structures are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle O in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 16. DCO Core Principle P: Conflicts of Interest

Pursuant to DCO Core Principle P, each DCO must establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCO.<sup>263</sup> In addition, each DCO must establish a process for resolving conflicts of interest.<sup>264</sup>

Each Petitioner represents that it has established a conflict of interest policy in a Code of Conduct or other corporate document that requires board members and employees to, among other things, avoid activities that are contrary to the interests of the Petitioner.<sup>265</sup> In addition, CAISO represents that Order No. 888 requires ISOs to implement strict conflict of interest policies.<sup>266</sup> Similarly, ERCOT asserts that the PUCT Substantive Rules require it to adopt policies to mitigate conflicts of interest.<sup>267</sup>

Based upon Petitioners' representations, it appears that the conflict of interest policies Petitioners have adopted and that the requirements Petitioners are subject to are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle P in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 17. DCO Core Principle Q: Composition of Governing Boards

DCO Core Principle Q provides that each DCO shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.<sup>268</sup>

ERCOT represents that its governing board includes representatives from the market,<sup>269</sup> CAISO, on the other hand, asserts that its board composition is mandated by California statute, wherein members are appointed by the Governor of California and confirmed by the California senate.<sup>270</sup> ISO NE and MISO assert that they have active market participants who are involved in the nomination and selection of Board members, while NYISO asserts that its market participants provide input and feedback through market participant committees, and other subcommittees and working groups, and PJM has a Members Committee that elects the members of the PJM Board.<sup>271</sup> FERC regulations require that an RTO "must have a decision making process that is independent of control by any market participant or class of participants."<sup>272</sup> However, FERC also requires that each ISO and RTO "adopt business practices and procedures that achieve Commission-approved independent system operator and regional transmission organization board of directors' responsiveness to customers and other stakeholders and satisfy [specified] criteria."<sup>273</sup>

Based on Petitioner's representations, and the regulations and supervision of FERC, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle Q in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 18. DCO Core Principle R: Legal Risk

Core Principle R requires a DCO to have a well-founded, transparent, and enforceable legal framework for each aspect of its activities.<sup>274</sup>

Petitioners assert that they operate under a transparent and comprehensive legal framework that is grounded in the Federal Power Act or the Texas Public Utility Regulatory Act, as applicable, and administered by FERC or the PUCT, as applicable.<sup>275</sup> Indeed, Petitioners assert that they are subject to FERC or PUCT orders rules and regulations and that each Petitioner operates pursuant to a tariff that has been reviewed and approved by FERC or the PUCT, as applicable.<sup>276</sup> Moreover, with respect to

Corporate Standard to addresses antitrust issues, and that "PURA, PUCT Substantive Rules and ERCOT Protocols also require that ERCOT allow access to the transmission system for all buyers and sellers of electricity on a nondiscriminatory basis, which facilitates actions consistent with the antitrust considerations of [DCO Core Principle N]." See Petition Attachments at 193-194.

<sup>256</sup> See Petition Attachments at 192-198.

<sup>257</sup> 7 U.S.C. 7a-1(c)(2)(O)(i).

<sup>258</sup> 7 U.S.C. 7a-1(c)(2)(O)(ii).

<sup>259</sup> See Petition Attachments at 200-208.

<sup>260</sup> See *id.* at 200 (citing to FERC Order No. 888).

<sup>261</sup> See Petition Attachments at 208 (citing to FERC Order No. 2000).

<sup>262</sup> See *id.* at 202.

<sup>263</sup> 7 U.S.C. 7a-1(c)(2)(P)(i).

<sup>264</sup> 7 U.S.C. 7a-1(c)(2)(P)(ii).

<sup>265</sup> See Petition Attachments at 210-216.

<sup>266</sup> See *id.* at 210.

<sup>267</sup> See *id.* at 211.

<sup>268</sup> 7 U.S.C. 7a-1(c)(2)(O).

<sup>269</sup> See Petition Attachments at 219.

<sup>270</sup> See *id.* at 218.

<sup>271</sup> See *id.* at 221-223.

<sup>272</sup> See 18 CFR 35.34(j)(1)(ii).

<sup>273</sup> See 18 CFR 35.28(g)(6).

<sup>274</sup> 7 U.S.C. 7a-1(c)(2)(R).

<sup>275</sup> See generally Petition Attachments at 225-235.

<sup>276</sup> See *id.*

an area of particular concern (eligibility for setoff in bankruptcy), the CFTC is requiring independent confirmation.<sup>277</sup>

Based on Petitioners' representations, it appears that this framework is congruent with, and sufficiently accomplishes, the regulatory objectives of Core Principle R in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### E. SEF Core Principles

##### 1. SEF Core Principle 1: Compliance With Core Principles

SEF Core Principle 1 requires a SEF to comply with the Core Principles described in part 37 of the Commission's Regulations.<sup>278</sup> As demonstrated by the following analysis, the Commission has made a preliminary determination that in the context of the Petitioners' activities with respect to the Transactions within the scope of this Proposed Exemption, Petitioners' practices appear congruent with, and to accomplish sufficiently, the regulatory objectives of each SEF core principle. The Commission requests comment with respect to this preliminary determination.

##### 2. SEF Core Principle 2: Compliance With Rules

SEF Core Principle 2 requires a SEF to establish and enforce compliance with any rule of the SEF.<sup>279</sup> A SEF is also required to (1) establish and enforce rules with respect to trading, trade processing, and participation that will deter market abuses and (2) have the capacity to detect, investigate and enforce those rules, including a means to (i) provide market participants with impartial access to the market, and (ii) capture information that may be used in establishing whether rule violations have occurred.<sup>280</sup>

Petitioners represent that they have transparent rules for their market, including rules that govern market abuses and compliance enforcement.<sup>281</sup> For instance, the independent market monitor established by statute for the ERCOT region oversees market behavior and reports any market compliance

issues to the state regulator.<sup>282</sup> If a market participant violates ERCOT rules, depending on the nature of the offense, ERCOT and/or the state regulator may take appropriate action against the party, including, but not limited to, terminating, expelling, suspending, or sanctioning a member.<sup>283</sup> The other Petitioners also represent that they have enforcement mechanisms that allow the Petitioners to, among other things, monitor their markets, investigate suspected tariff violations, take action against violators (including assessing fines or suspending or terminating a market participant's participation in market activities), and refer potential violations to FERC.<sup>284</sup>

Based on the foregoing, it appears that the Petitioners' practices are consistent with, and sufficiently accomplish, the regulatory goals of SEF Core Principle 2 in the context of Petitioners' activities with respect to the Transactions. The Commission requests comment with respect to this preliminary determination.

##### 3. SEF Core Principle 3: Swaps Not Readily Susceptible to Manipulation

SEF Core Principle 3 requires a SEF submitting a contract to the Commission for certification or approval to demonstrate that the swap is not readily susceptible to manipulation.<sup>285</sup>

###### a. Energy Transactions

Petitioners define Energy Transactions to include both physically-delivered as well as cash-settled contracts.<sup>286</sup> For purposes of this Proposed Exemption, the Commission limits the analysis to Energy Transactions that are cash-settled.

Petitioners have represented to the Commission that market participants use the cash-settled Energy Transactions to arbitrage between the Day-Ahead and Real-Time markets.<sup>287</sup> The result is that prices between the Day-Ahead and Real-Time markets converge and reduce the price volatility normally found in electricity markets.<sup>288</sup> Indeed, the contracts were created with this very purpose in mind.<sup>289</sup>

The Commission understands that MMUs operated by each of the Petitioners have been organized in such

a way that both the Real-Time and Day-Ahead markets are monitored to identify suspicious trading activity.<sup>290</sup> In the event the MMUs identify suspicious trading activity, FERC, or PUCT in the case of ERCOT, is notified so that further investigation may be done. An example of such suspicious trading activity would involve a market participant engaging in Energy Transactions that repeatedly incur a loss.<sup>291</sup> Repeated losses in Energy Transactions would indicate that a market participant is sustaining losses to improve another position. For example, in the event a market participant tried to manipulate the price of electricity in the Day-Ahead or Real-Time markets to improve a different position, such as an FTR, they would have to submit bids that drove up the price of electricity for that specific node. In order to do this, however, the participant would have to submit a large dollar amount of offers at an inflated price. The Commission believes that this type of trading activity should be detectable by the MMUs. In addition to being difficult to effectuate simply because of the financial resources required, the Commission believes that any such activity should be apparent to not only MMUs using their ordinary oversight tools, but to market participants, who should have a self-interest in reporting such activity to the MMUs. Notably, such manipulative schemes have been identified and prosecuted by FERC in the past.<sup>292</sup>

Petitioners represent that they have adequate staff and IT resources to conduct market surveillance.<sup>293</sup> Each Petitioner follows a similar market design which allows for price discovery at thousands of nodes and paths in short time intervals (every five to fifteen minutes) in both the Real-Time and Day-Ahead markets.<sup>294</sup> The MMUs look

<sup>290</sup> See generally Petition Attachments at 124–147.

<sup>291</sup> See generally *id.*

<sup>292</sup> On March 9, 2012 Constellation Energy and FERC's Office of Enforcement entered into a Stipulation and Consent Agreement in which Constellation neither admitted nor denied wrongdoing. FERC initially alleged that Constellation manipulated the price of electricity using virtual and physically-settled transactions on the markets of ISO NE and NYISO to benefit non-ISO swap positions. After receiving two anonymous hotline tips, FERC was alerted to potentially problematic trading after detecting successive losses by Constellation in their virtual and physical bids on the NYISO. Constellation agreed to pay a fine of \$135,000,000 and disgorge \$110,000,000 in unjust profits. See Order approving stipulation and agreement, Docket No. IN12–7–000, 138 FERC ¶ 61,168.

<sup>293</sup> See Petition at 126–150.

<sup>294</sup> See generally Petition Attachments at 247–258.

<sup>277</sup> See the discussion in section V.D.4.g.

<sup>278</sup> 7 U.S.C. 7b–3(f)(1).

<sup>279</sup> 7 U.S.C. 7b–3(f)(2).

<sup>280</sup> SEF Core Principle 2 also requires a SEF to establish rules governing the operation of the facility, including trading procedures, and provide rules that, when a swap is subject to the mandatory clearing requirement, hold swap dealers and major swap participants responsible for compliance with the mandatory trading requirement under section 2(h)(8) of the Act.

<sup>281</sup> Petition Attachments at 238–245.

<sup>282</sup> See *id.* at 130. See also *id.* at 239–240.

<sup>283</sup> See *id.* at 129. See also *id.* at 239–240.

<sup>284</sup> See *id.* at 128, 131–150. See also *id.* at 238, 241–245.

<sup>285</sup> 7 U.S.C. 7b–3(f)(3).

<sup>286</sup> See Petition at 7.

<sup>287</sup> See Petition Attachments at 252–253.

<sup>288</sup> See *id.* at 142. See also *id.* at 253.

<sup>289</sup> FERC Order on Compliance Filing to PJM, 139 FERC ¶ 61,057 issued April 19, 2012 in Docket No. ER09–1063–004.

for manipulative behavior and market power, as well as market flaws (such as persistent non-convergence of Day-Ahead and Real-Time prices), which are fed back into a stakeholder process for changing the market structure and rules.<sup>295</sup>

Based on the Petitioners' representations regarding the surveillance carried out by the MMUs for each Petitioner and the method by which the Day-Ahead and Real-Time auctions are conducted, it appears that Petitioners' policies and procedures to mitigate the susceptibility of Energy Transactions to manipulation are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 3 in the context of Petitioners' activities with respect to the Energy Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### b. Financial Transmission Rights ("FTRs")

Based upon the Petitioners' representations, the Commission understands FTRs to be cash-settled contracts that entitle the holder to a payment equal to the difference in the price of electricity between two specific nodes.<sup>296</sup> The difference in price between the two nodes represents the settlement price. The price at each node is established through auctions conducted on the Day-Ahead market of each Petitioner.<sup>297</sup> As discussed above, the Commission has made a preliminary determination that the Real-Time and Day-Ahead markets on Petitioners' platforms appear to be consistent with SEF Core Principle 3.

As previously discussed, both the Petitioners and their respective MMUs conduct market surveillance of both the Real-Time and Day-Ahead markets to identify manipulation of the price of electricity. In the event unusual trading activity is detected by the Petitioners' MMUs, the MMUs will immediately contact FERC, or PUCT in the case of ERCOT, so that an investigation into the unusual activity may begin.<sup>298</sup> Although the price of FTRs may be altered by the manipulation of the Real-Time or Day-Ahead markets, FERC requires that the Petitioners have systems to monitor for such activity.

The Commission believes that the Petitioners' policies and procedures should mitigate the susceptibility of FTRs to manipulation and that they are

congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 3 in the context of Petitioners' activities with respect to FTRs. The Commission seeks comment with respect to this preliminary conclusion.

In addition to the Petitioners' policies and procedures for the detection of manipulative behavior in connection with FTRs, the Commission notes that since an FTR holder is entitled to a payment based on the price difference between two nodes, and not the physical delivery of electricity, it may be the case that FTRs are difficult to use to manipulate the price of electricity. For instance, the size of a participant's FTR position should not affect the price of electricity established on the Petitioners' Real-Time and Day-Ahead markets and holding an FTR does not provide a means to limit the deliverable supply of electricity. The Commission seeks comment on this evaluation and whether it should be considered in analyzing FTRs under SEF Core Principle 3.

#### c. Capacity and Reserve Transactions

Both Capacity and Reserve Transactions are entered into pursuant to auctions carried out by each of the Petitioners.<sup>299</sup> However, unlike the auctions for the Real-Time and Day-Ahead markets, the auctions for capacity and reserve transactions simply allow each Petitioner to accept bids submitted by market participants that have the ability to inject electricity into the Petitioner's electricity transmission system.<sup>300</sup>

The Commission notes that the Petitioners would apply the same oversight policies and procedures to Capacity and Reserve Transactions that they apply to Energy Transactions and FTRs. The Commission believes that these measures appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 3 in the context of Petitioners' activities with respect to Capacity and Reserve Transactions. The Commission seeks comment with respect to this preliminary conclusion.

The Commission also seeks comment on whether the auction procedures used in connection with Capacity and Reserve Transactions could reduce the likelihood for manipulation of such agreements due to the fact that the Petitioners themselves are the only possible counterparty during each auction. For example, when CAISO conducts an auction for Generation

Capacity, it is the only party that would enter into the agreement with a CAISO market participant capable of providing the contracted for electricity. CAISO would then call upon the Capacity and Reserve Transaction counterparties to inject electricity into the system when the technical requirements of operating the transmission system deem injection necessary. Accordingly, Capacity and Reserve Transactions seem to be distinguishable from FTRs or Energy Transactions in that they are used exclusively for operational maintenance of the electric transmission system, and not as a means of reducing exposure to price volatility, arbitrage or price discovery. The Commission seeks comment on this analysis of Capacity and Reserve Transactions and whether it should be considered in the Commission's review of these instruments under SEF Core Principle 3.

#### 4. SEF Core Principle 4: Monitoring of Trading and Trade Processing

SEF Core Principle 4 requires a SEF to establish and enforce rules or terms and conditions defining trading procedures to be used in entering and executing orders traded on or through the SEF and procedures for the processing of swaps on or through the SEF.<sup>301</sup> SEFs are also required to establish a system to monitor trading in swaps to prevent manipulation, price distortion and disruptions of the delivery or cash settlement process through surveillance, compliance and disciplinary practices and procedures. The main goal of this Core Principle is to monitor trading activity to detect or deter market participants from manipulating the price or deliverable supply of a commodity.

##### a. Energy Transactions

Generally, the Petitioners have tariffs in place that list how Energy Transactions are to be entered into the trading platform.<sup>302</sup> Using these procedures, MMUs are able to track the Energy Transactions submitted by market participants and identify trading activity that could be manipulative. As a result, Petitioners' policies and procedures regarding monitoring of trading and trade processing appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 4 in the context of Petitioners' activities with respect to Energy Transactions. The Commission

<sup>295</sup> See generally *id.* at 126–150.

<sup>296</sup> See Petition at 6.

<sup>297</sup> See, e.g., Petition Attachments at 252.

<sup>298</sup> See generally Petition Attachments at 128–150.

<sup>299</sup> See Petition at 7–9.

<sup>300</sup> See Petition at 7–9.

<sup>301</sup> 7 U.S.C. 7b–3(f)(4).

<sup>302</sup> See generally Petition Attachments at 260–269.

seeks comment with respect to this preliminary conclusion.

#### b. FTRs

The process by which the FTR allocation and auction takes place provides the Petitioners with a basic system that allows the Petitioners to determine which market participants hold FTRs. According to the Petitioners' tariffs, LSEs applying for FTRs during the allocation phase must first establish that they are in fact exposed to load levels for the transmission lines on which they will transmit electricity.<sup>303</sup> Once an LSE has demonstrated such exposure, they will be allowed to participate in the FTR allocation. The FTRs are allocated to each LSE in direct relation to the level of exposure to which the LSEs are subject.<sup>304</sup> This process of determining congestion exposure and allocating FTRs in relation to that exposure ensures that Petitioners will have a record of the number of FTRs held by each member.

During the auction and secondary market phases, the Petitioners also have systems in place to track which participants hold FTRs. During the auction phase, any credit-worthy member of the RTO or ISO may bid on FTRs. Since the auctions are conducted on the Petitioners' platforms, they will have records of which market participants hold FTRs after the auctions. Once an auction is complete, credit-worthy members may then engage in bilateral transactions to trade FTRs. Again, Petitioners have implemented systems to track these bilateral transactions between FTR holders. Once a bilateral transaction is reported, the Petitioner then performs a credit check to ensure that the new owner of the FTR has the financial capability to assume the risk posed by ownership of the FTR.<sup>305</sup> The Petitioners do not perform an analysis to determine whether a member is obtaining a large position in the secondary FTR market. The Petitioners only identify which members hold FTRs in the secondary market.

Based on the foregoing representations, it appears that the Petitioners' policies and procedures regarding the monitoring of trading and trade processing are consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 4 in the context of Petitioners' activities with respect to FTRs. The Commission seeks comment with respect to this preliminary conclusion.

#### c. Capacity and Reserve Transactions

As discussed above, the auction process used for Capacity and Reserve Transactions differs from the process used in the Real-Time and Day-Ahead markets. Furthermore, Capacity and Reserve Transactions are not used to limit exposure to price volatility, discover prices or engage in arbitrage. The transactions are predominantly bilateral agreements between each Petitioner and certain of that Petitioner's market participants for the provision of electricity in order to meet the technical requirements necessary to operate the electric transmission system. The contracts are not readily susceptible to manipulation and there is no market trading that must be monitored to prevent manipulation or congestion of the physical delivery market. As a result, the Petitioners' policies and procedures regarding the monitoring of trading and trade processing appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 4 in the context of Petitioners' activities with respect to Capacity and Reserve Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 5. SEF Core Principle 5: Ability To Obtain Information

SEF Core Principle 5 requires a SEF to establish and enforce rules that will allow it to obtain any necessary information to perform the functions described in section 733 of the Dodd-Frank Act, provide information to the Commission upon request, and have the capacity to carry-out such international information-sharing agreements as the Commission may require.<sup>306</sup> As discussed above,<sup>307</sup> each Petitioner represents that it has rules in place that require market participants to submit information to Petitioners upon request so that Petitioners may conduct investigations and provide or give access to such information to their market monitors and FERC or PUCT, as applicable.<sup>308</sup> On the basis of these representations, it appears that Petitioners' practices are consistent with, and sufficiently accomplish, the regulatory goals of SEF Core Principle 5. The Commission seeks comment with respect to this preliminary determination.

<sup>306</sup> 7 U.S.C. 7b-3(f)(5).

<sup>307</sup> See generally the discussions in sections V.D.10. and V.D.13. *supra*.

<sup>308</sup> See generally Petition Attachments at 271-276.

#### 6. SEF Core Principle 6: Position Limits or Accountability

SEF Core Principle 6 requires SEFs that are trading facilities, as that term is defined in CEA section 1a(51), to establish position limits or position accountability for speculators, as is necessary and appropriate, for each swap traded on the SEF in order to prevent or reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month.<sup>309</sup> While the markets administered by Petitioners are subject to MMUs (as discussed above in section IV.C.), Petitioners do not have position limits or position accountability thresholds for speculators in order to reduce the potential threat of market manipulation or congestion. The Commission specifically requests comment as to whether the lack of position limits or position accountability thresholds for speculators in Petitioners' markets, given the nature of their markets and market participants, and the other regulatory protections applicable to these markets as described herein, would prevent the Commission from determining that the Proposed Exemption is consistent with the public interest and the purposes of the CEA.

#### 7. SEF Core Principle 7: Financial Integrity of Transactions

SEF Core Principle 7 requires a SEF to establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the SEF, including the clearance and settlement of swaps pursuant to section 2(h)(1) of the CEA.

#### a. Risk Management Requirements and Credit Policies

Petitioners represent that they ensure the financial integrity of transactions that are entered on or through their markets through the risk management requirements and credit policies that apply to their market participants.<sup>310</sup> In addition to minimum capitalization requirements, Petitioners represent that they all have in place, or are in the process of implementing, risk management policies and procedures and internal controls appropriate to their trading activities in the RTO and ISO markets in which they

<sup>309</sup> Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant' and 'Eligible Contract Participant,' 77 FR 30596, May 23, 2012.

<sup>310</sup> See Petition at 18-21; see Petition Attachments at 285-291.

<sup>303</sup> See generally *id.*

<sup>304</sup> See *id.*

<sup>305</sup> See *id.* at 2-20.

participate.<sup>311</sup> Petitioners further represent that they require a responsible officer of the market participant to certify, on an annual basis, that the market participant has in place risk management policies, procedures and internal controls appropriate to its trading activities.<sup>312</sup> Moreover, several Petitioners represent that they have proposed verification programs that confirm that participants who pose significant risks to the markets in which they participate have in place adequate risk management policies and internal controls.<sup>313</sup>

In terms of credit policies, Petitioners represent that they have established “comprehensive and integrated” credit policies to manage credit risk and protect the financial integrity of transactions with market participants.<sup>314</sup> In addition, Petitioners represent that FERC Order 741 placed additional risk management and credit requirements on RTOs and ISOs.<sup>315</sup>

#### b. Minimum Financial Standards and Ongoing Monitoring for Compliance

In addition, based on Petitioners’ representations, it appears that Petitioners’ policies and procedures include minimum financial standards<sup>316</sup> and creditworthiness

<sup>311</sup> See Petition at 20; *see, e.g.*, Petition Attachments at 22–24, 27, 33, 37.

<sup>312</sup> See Petition at 20; *see* Petition Attachments at 22, 28, 35, 37, 44, 47–48.

<sup>313</sup> See Petition at 20; *see, e.g.*, Petition Attachments at 23, 27, 44, 50.

<sup>314</sup> See Petition at 18; *see, e.g.*, Petition Attachments at 22, 25, 30–31, 39–43, 283.

<sup>315</sup> See Petition at 19. Such additional requirements include (a) limiting the amount of unsecured credit extended to any market participant to no more than \$50 million; (b) adopting a billing period of no more than seven days and allowing a settlement period of no more than seven days; (c) eliminating unsecured credit in the financial transmission rights market; (d) establishing a single counterparty to all market participant transactions, or requiring each market participant to grant a security interest to the RTO or ISO in the receivables of its transactions, or providing another method of supporting netting; (e) limiting the time period by which a market participant must cure a collateral call to no more than two days; (f) requiring minimum participant criteria for market participants to be eligible to participate in the markets; and (g) requiring additional collateral due to a material adverse change. *See* 18 CFR 35.47.

<sup>316</sup> *See, e.g.*, Petition Attachments at 30. Some Petitioners required market participants to demonstrate and maintain certain minimum financial requirements including an investment-grade credit rating documented by reports of a credit reporting agency, tangible net-worth threshold, total asset threshold, a certain current ratio, or a certain debt to total capitalization ratio. *See, e.g.*, Petition Attachments at 26, 33–34, 37, 43. In certain instances, the minimum financial standards for market participants are scalable to the RTO and ISO markets in which they participate. *See, e.g.*, Petition Attachments at 26, 31. The proposed rule regarding minimum financial standards also requires at a minimum, that

standards<sup>317</sup> for their market participants.<sup>318</sup> Moreover, Petitioners represent that their policies and procedures, require Petitioners to monitor, on an ongoing basis, their market participants for compliance with such standards.<sup>319</sup>

#### c. Establishment of a Central Counterparty

As discussed in section V.C. above, FERC regulation 35.47(d) requires RTOs and ISOs to (1) establish a single counterparty to all market participant transactions, (2) require each market participant to grant a security interest in the receivables of its transactions to the relevant RTO or ISO, or (3) provide another method of supporting netting that provides a similar level of protection to the market that is approved by FERC.<sup>320</sup> Petitioners have represented that they either are, or plan on becoming, central counterparties.<sup>321</sup>

As described in section V.D.4.g. above, the Commission is proposing to require that each Petitioner submit a well-reasoned legal memorandum from, or a legal opinion of, outside counsel that, in the Commission’s sole discretion, provides the Commission with adequate assurance that the approach selected by the Petitioner will in fact provide the Petitioner with set-off rights in a bankruptcy proceeding. In addition, the Commission is requesting comment on whether ERCOT should be obligated to comply with the requirements of FERC regulation 35.47(d).

#### d. Conclusion

Issues regarding risk management requirements, financial standards, and the use of a central counterparty are also addressed within the context of DCO Core Principle D. The Commission’s preliminary conclusion that Petitioners policies and procedures are congruent

members qualify as an eligible contract participant as defined by the CEA. The Commission notes that ISO NE has represented that it has market participants that may not meet the definition of eligible contract participant, but are “appropriate persons” for purposes of the 4(c) exemption. *See* Petition Attachments at 30. The Commission proposes to condition the granting of the 4(c) request on all parties to the agreement, contract or transaction being “appropriate persons,” as defined sections 4(c)(3)(A) through (J) of the Act or “eligible contract participants” as defined in section 1a(18)(A) of the Act and in Commission regulation 1.3(m). *See* provision 2.B. of the Proposed Exemption.

<sup>317</sup> *See* Petition at 18; *see, e.g.*, Petition Attachments at 22, 31, 39.

<sup>318</sup> *See, e.g.*, Petition Attachments at 27, 30, 35, 84.

<sup>319</sup> *See* Petition Attachments at 56–92.

<sup>320</sup> 18 CFR 35.47(d).

<sup>321</sup> *See* FERC Order 741 Implementation Chart at 5–6; *See generally* Petition at 19.

with, and sufficiently accomplish, the regulatory objectives of Core Principle D in the context of the Petitioners’ activities with respect to the Transactions is relevant in considering SEF Core Principle 7.

Based on the foregoing analysis, including the representations of the Petitioners, Petitioners’ policies and procedures appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 7 in the context of Petitioners’ activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 8. SEF Core Principle 8: Emergency Authority

SEF Core Principle 8 requires that SEFs adopt rules to provide for the exercise of emergency authority.<sup>322</sup> A SEF should have procedures and guidelines for decision-making and implementation of emergency intervention in the market. A SEF should have the authority to perform various actions, including without limitation: liquidating or transferring open positions in the market, suspending or curtailing trading in any swap, and taking such market actions as the Commission may direct. In addition, SEFs must provide prompt notification and explanation to the Commission of the exercise of emergency authority.<sup>323</sup>

Petitioners represent that their Tariffs generally provide a wide range of authorities to address emergency situations.<sup>324</sup> Certain Petitioners have the ability to close out and liquidate all of a market participant’s current and forward FTR positions if the market participant no longer meets creditworthiness requirements, or fails to make timely payment when due, in each case following any opportunity given to cure the deficiency.<sup>325</sup> Other Petitioners have the authority to suspend trading in their markets.<sup>326</sup>

Just as the SEFs have rules in place that require them to take emergency actions to protect the markets by “including imposing or modifying position limits, imposing or modifying price limits, imposing or modifying intraday market restrictions, imposing special margin requirements, ordering the liquidation or transfer of open positions in any contract, ordering the fixing of a settlement price,” one

<sup>322</sup> 7 U.S.C. 7b–3(f)(8).

<sup>323</sup> Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1229, proposed Jan. 7, 2011.

<sup>324</sup> *See* Petition Attachments at 293–298.

<sup>325</sup> *See, e.g., id.* at 293–295, 298.

<sup>326</sup> *See, e.g., id.* at 296–297.

Petitioner represents that it may take actions to protect its markets by postponing the closure of affected markets, removing bids that have previously resulted in market disruptions, setting an administrative price to settle metered supply, or demanding, suspending or limiting the ability of scheduling coordinators to submit Energy Transactions.<sup>327</sup>

Based on the foregoing representations, it appears that Petitioners' policies and procedures regarding the exercise of emergency authority are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 8 in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 9. SEF Core Principle 9: Timely Publication of Trading Information

SEF Core Principle 9 requires a SEF to make public timely information on price, trading volume, and other data on swaps to the extent prescribed by the Commission.<sup>328</sup> In addition, SEFs are required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the SEF.<sup>329</sup>

Petitioners represent that their Tariffs generally require the timely publication of trading information.<sup>330</sup> Petitioners regulated by FERC also assert that they are able to publicly release market operations and grid management information using their Open Access Same-Time Information System (OASIS) program.<sup>331</sup> This system transmits information which includes market results, the market clearing price and volume.<sup>332</sup> Similarly, ERCOT's protocols require them to disseminate information which relates to market operations, prices, availability of services and the terms and conditions of the FTRs.<sup>333</sup>

Based on the foregoing representations, it appears that Petitioners' policies and procedures regarding the publication of trading information are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 9 in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 10. SEF Core Principle 10: Recordkeeping and Reporting

SEF Core Principle 10 requires a SEF to maintain records of all activity relating to the business of the SEF, report such information to the Commission and to keep swaps information open to inspection by the Commission.<sup>334</sup> Petitioners represent that their Tariffs require their market participants to provide Petitioners with information on a regular and *ad hoc* basis.<sup>335</sup> Petitioners further represent that they are required to comply with FERC or PUCT regulations, as applicable, regarding the maintenance of information by public utilities.<sup>336</sup>

Based on the Petitioners representations and the discussion regarding DCO Core Principles J and K above,<sup>337</sup> it appears that these practices are congruent with, and sufficiently accomplish the regulatory objectives of SEF Core Principle 10 in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 11. SEF Core Principle 11: Antitrust Considerations

SEF Core Principle 11 prevents a SEF from adopting any rule or taking any action that results in any unreasonable restraint of trade, or imposes any material anticompetitive burden, unless necessary or appropriate to achieve the purposes of the Act.<sup>338</sup> As discussed above, FERC established the RTO/ISO system to promote competition in the electricity market.<sup>339</sup> Petitioners represent that their rates, terms and conditions of service are subject to the oversight, review and acceptance of FERC or PUCT, as applicable.<sup>340</sup> Petitioners further represent that FERC or PUCT and their MMUs review trading activity to identify anticompetitive behavior.<sup>341</sup>

Based on Petitioners' representations and the discussion of DCO Core Principle N above,<sup>342</sup> it appears that Petitioners' existence and practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 11 in the context of

Petitioners' activities with respect to the Transactions. The Commission seeks comment on this preliminary conclusion.

#### 12. SEF Core Principle 12: Conflicts of Interest

SEF Core Principle 12 requires a SEF to establish and enforce rules to minimize conflicts of interest and establish a process for resolving conflicts of interest.<sup>343</sup> As discussed above, FERC Order No. 888 requires ISOs to adopt or enforce strict conflict of interest policies.<sup>344</sup> Similarly, FERC Order No. 2000 requires RTOs to be independent of any market participant, and to include in their demonstration of independence that the RTO, its employees, and any non-stakeholder directors do not have financial interests in any market participant.<sup>345</sup> Each Petitioner represents that it has either established codes of conduct, which include conflict of interest rules, for employees and members of the Board of Directors<sup>346</sup> or implemented specific policies and procedures to mitigate conflicts of interest.<sup>347</sup> Based on Petitioners' representations and the discussion of DCO Core Principle P above,<sup>348</sup> it appears that Petitioners' conflict of interest policies and the requirements to which the Petitioners are subject are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 12 in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 13. SEF Core Principle 13: Financial Resources

SEF Core Principle 13 requires a SEF to have adequate financial, operational and managerial resources to discharge each responsibility of the SEF.<sup>349</sup> In addition, the financial resources of a SEF are considered to be adequate if the value of the financial resources exceeds the total amount that would enable the SEF to cover the operating costs of the SEF for a 1-year period, as calculated on a rolling basis.<sup>350</sup>

Petitioners represent that they have rules in place that allow them to collect revenue from market participants

<sup>334</sup> 7 U.S.C. 7b-3(f)(10).

<sup>335</sup> See generally Petition at 307-312.

<sup>336</sup> See, e.g., *id.* at 309.

<sup>337</sup> See the discussions in sections V.D.10. and V.D.11. *supra*.

<sup>338</sup> 7 U.S.C. 7b-3(f)(11).

<sup>339</sup> See FERC Order Nos. 888 and 2000. See also the discussion in section V.D.14. *supra*.

<sup>340</sup> See generally Petition Attachments at 192-198.

<sup>341</sup> See generally *id.*

<sup>342</sup> See also the discussion in section V.D.14. *supra*.

<sup>343</sup> 7 U.S.C. 7b-3(f)(12).

<sup>344</sup> See FERC Order No. 888 at 281.

<sup>345</sup> See FERC Order No. 2000 at 709; 18 CFR 35.34(j)(1).

<sup>346</sup> See Petition Attachments at 210, 213-216, 321, 324-326.

<sup>347</sup> See *id.* at 211, 322.

<sup>348</sup> See the discussion in section V.D.16. *supra*.

<sup>349</sup> 7 U.S.C. 7b-3(f)(13)(A).

<sup>350</sup> 7 U.S.C. 7b-3(f)(13)(B).

<sup>327</sup> Petition Attachments at 293 (CAISO).

<sup>328</sup> 7 U.S.C. 7b-3(f)(9)(A).

<sup>329</sup> 7 U.S.C. 7b-3(f)(9)(B).

<sup>330</sup> See Petition Attachments at 300-305.

<sup>331</sup> See *id.* at 300, 302-305.

<sup>332</sup> See *id.*

<sup>333</sup> See Petition Attachments at 177-178.

sufficient for each of their operations.<sup>351</sup> Petitioners further represent to have adequate managerial resources to operate their systems.<sup>352</sup> As discussed above, FERC Order No. 888 requires RTOs to have appropriate incentives for efficient management and administration.<sup>353</sup> Each Petitioner represents that it has sufficient staff necessary for its operations.<sup>354</sup>

Based on Petitioners' representations and the discussion regarding DCO Core Principle B above,<sup>355</sup> it appears that Petitioners' practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 13 in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 14. SEF Core Principle 14: System Safeguards

SEF Core Principle 14 requires a SEF to establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that are reliable and secure, and have adequate scalable capacity.<sup>356</sup> Moreover, a SEF must establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations, and the fulfillment of the responsibilities and obligations of the SEF.<sup>357</sup> The SEF must also conduct tests to verify that the backup resources of the SEF are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.<sup>358</sup>

Petitioners represent that they have a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures; reliable automated systems; and emergency procedures.<sup>359</sup> Indeed, Petitioners are responsible for managing power reliably and, thus,

require additional operational safeguards to specifically address that function.<sup>360</sup>

Petitioners represent that they have computer systems that incorporate adequate business continuity and disaster recovery functionality.<sup>361</sup> Some Petitioners state that they maintain offsite backup computer systems fully able to operate in the event the primary system fails<sup>362</sup> whereas other Petitioners state that they operate two control centers and/or two data centers in which each center is functionally capable of operating as the primary center.<sup>363</sup> Some Petitioners further state that they conduct testing of emergency procedures and system components on a regular basis to ensure that mission critical processes and vital records are recoverable, as well as the readiness of backup facilities and personnel.<sup>364</sup>

Based on Petitioners' representations and the discussion regarding DCO Core Principle I above,<sup>365</sup> it appears that Petitioners' practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 14 in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

#### 15. SEF Core Principle 15: Designation of Chief Compliance Officer

SEF Core Principle 15 requires that a SEF designate an individual as Chief Compliance Officer, with specific delineated duties.<sup>366</sup> The Chief

Compliance Officer for a SEF would be responsible for reporting to the board and ensuring that the SEF is in compliance with the SEF rules. Each Petitioner represents that it has a Chief Compliance Officer<sup>367</sup> or the functional equivalent of such a position.<sup>368</sup>

Based on the Petitioners' representations, it appears that Petitioners' practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 15 in the context of Petitioners' activities with respect to the Transactions. The Commission seeks comment with respect to this preliminary conclusion.

### VIII. Proposed Exemption

#### A. Discussion of Proposed Exemption

Pursuant to the authority provided by section 4(c)(6) of the CEA,<sup>369</sup> in accordance with CEA sections 4(c)(1) and (2), and consistent with the Commission's determination that the statutory requirements for granting an exemption pursuant to section 4(c)(6) of the Act have been satisfied, the Commission is proposing to issue the exemption described in the Proposed Exemption set forth below. The Proposed Exemption would exempt, subject to the limitations and conditions contained therein, the purchase and sale of certain electricity-related products, including specifically-defined "financial transmission rights," "energy transactions," "forward capacity transactions," and "reserve or regulation transactions," from most provisions of

(vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

<sup>367</sup> See Petition Attachments at 342–346.

<sup>368</sup> PJM has two compliance heads who coordinate closely but are separately responsible for compliance in the following two distinct areas: (1) compliance with regulatory and legal obligations; and (2) compliance with reliability standards as promulgated by the regional reliability councils, NERC and FERC. Regulatory and legal compliance addresses legal obligations, including compliance with the PJM Tariff, FERC regulations and laws, and regulations governing other corporate matters, such as antitrust, human resources and procurement. Regulatory and legal compliance is handled in the Office of General Counsel, by an Assistant General Counsel and Director of Regulatory Oversight and Compliance. Reliability compliance addresses the security of the grid, both operationally and from any cyber threat. This function is handled in the area of operations and the Executive Director of Reliability and Compliance reports directly to the senior vice president for operations. All compliance functions (both reliability and regulatory) are coordinated through PJM's Regulatory Oversight & Compliance Committee ("ROCC"). The ROCC is chaired by the Assistant General Counsel who has reporting obligations to the CEO and a direct line to the Board's Governance Committee and Audit Committee. See Petition Attachments at 347.

<sup>369</sup> 7 U.S.C. 6(c).

<sup>351</sup> See Petition Attachments at 3–4, 6, 8–10, 13, 16, 20, 328–333.

<sup>352</sup> See *id.* at 3, 7–8, 10, 13, 16, 18–19.

<sup>353</sup> See *supra* n. 86 and accompanying text.

<sup>354</sup> See Petition Attachments at 3, 7, 12, 13, 16–17, 18–19, 335–340. See also analysis under DCO Core Principle B.

<sup>355</sup> See the discussion in section V.D.2. *supra*.

<sup>356</sup> 7 U.S.C. 7b–3(f)(14)(A).

<sup>357</sup> 7 U.S.C. 7b–3(f)(14)(B).

<sup>358</sup> 7 U.S.C. 7b–3(f)(14)(C).

<sup>359</sup> See generally Petition Attachments at 152–158, 333–340.

<sup>360</sup> See *supra* n. 230 and accompanying text.

<sup>361</sup> See Petition Attachments at 152–158, 333–339.

<sup>362</sup> See *id.* at 152, 155–157.

<sup>363</sup> See *id.* at 153, 158. Certain Petitioners maintain alternate operational control centers in addition to offsite backup computer systems and data centers. See *id.* at 155–157.

<sup>364</sup> See *id.* at 152, 154, 156, 158.

<sup>365</sup> See also the discussion in section V.D.8. *supra*.

<sup>366</sup> See 7 U.S.C. 7b–3(f)(15), designation of chief compliance officer.—

(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a chief compliance officer.

(B) DUTIES.—The chief compliance officer shall—

(i) report directly to the board or to the senior officer of the facility;

(ii) review compliance with the core principles in this subsection;

(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

(v) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

the CEA. The Commission is proposing to explicitly exclude from the exemption relief the Commission's general anti-fraud, anti-manipulation and enforcement authority under the CEA including, but not limited to, CEA sections 2(a)(1)(B), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13 and any implementing regulations promulgated thereunder including, but not limited to Commission regulations 23.410(a) and (b), 32.4<sup>370</sup> and part 180.<sup>371</sup> The preservation of the Commission's anti-fraud and anti-manipulation authority provided by these provisions generally is consistent with both the scope of the exemption requested in the Petition<sup>372</sup> and recent Commission practice.<sup>373</sup>

The particular categories of contracts, agreements and transactions to which the Proposed Exemption would apply correspond to the types of transactions for which relief was explicitly requested in the Petition.<sup>374</sup> Petitioners requested relief for four specific types of transactions and the Proposed Exemption would exempt those transactions. With respect to those transactions, the Petition also included the parenthetical "(including generation, demand response or convergence or virtual bids/ transactions)."<sup>375</sup> The Commission notes that such transactions would be included within the scope of the exemption if they would qualify as the financial transmission rights, energy transactions, forward capacity transactions or reserve or regulation transactions for which relief is explicitly

provided within the exemption. Petitioners also have requested relief for "the purchase and sale of a product or service that is directly related to, and a logical outgrowth of, any [of Petitioner's] core functions as an ISO/RTO \* \* \* and all services related thereto."<sup>376</sup> The Commission has determined that it would be inappropriate, and, accordingly, has declined to propose that the exemption be extended beyond the scope of the transactions that are specifically defined in the Proposed Exemption. As noted above, the authority to issue an exemption from the CEA provided by section 4(c) of the Act may not be automatically or mechanically exercised. Rather, the Commission is required to affirmatively determine, *inter alia*, that the exemption would be consistent with the public interest and the purposes of the Act.<sup>377</sup> With respect to the four groups of transactions explicitly detailed in the Proposed Exemption, the Commission's proposed finding that the Proposed Exemption would be in the public interest and would be consistent with the purposes of the CEA was grounded, in part, on certain transaction characteristics and market circumstances described in the Petition that may or may not be shared by other, as yet undefined, transactions engaged in by the Petitioners or other RTO or ISO market participants.<sup>378</sup> Similarly, unidentified transactions might include novel features or have market implications or risks that are not present in the specified transactions. Such elements may impact the Commission's required section CEA 4(c) public interest analysis or may warrant the attachment of additional or differing terms and conditions to any relief provided. Due to the potential for adverse consequences resulting from an exemption that includes transactions whose qualities and effect on the broader market cannot be fully appreciated absent further specification, it does not appear that the Commission can justify a conclusion that it would be in the public interest to provide an exemption of the full breadth requested. The Commission notes, however, that it has requested comment on whether the proposed scope of the exemption is sufficient to allow for innovation and, if not, how the scope could be expanded, without exempting products that may be substantially different from those

reviewed by the Commission. The Commission also notes that it stands ready to review promptly any additional applications for an exemption pursuant to section 4(c)(6), in accordance with CEA sections 4(c)(1) and (2), of the CEA for other precisely defined products.<sup>379</sup>

The scope of the Proposed Exemption is limited by two additional factors. First, it is restricted to agreements, contracts or transactions where all parties thereto are either: (1) Entities described in section 4(c)(3)(A) through (J) of the CEA<sup>380</sup> or (2) "eligible contract participants," as defined in section 1a(18) of the Act<sup>381</sup> or in Commission regulation 1.3(m).<sup>382</sup> Although Petitioners have requested an exemption pursuant to section 4(c)(6) of the CEA, any exemption pursuant to this subsection must be issued in "in accordance with" sections 4(c)(1) and 4(c)(2).<sup>383</sup> Section 4(c)(2) prohibits the Commission from issuing an exemption pursuant to section 4(c) unless the Commission determines that the agreement, contract or transaction "will be entered into solely between 'appropriate persons.'" Appropriate persons include those entities explicitly delineated in sections 4(c)(3)(A) through (J) of the Act as well as others that the Commission, under the discretionary authority provided by section 4(c)(3)(K), deems to be appropriate persons "in light of their financial or other qualifications, or the applicability of appropriate regulatory protections."<sup>384</sup> As noted above, the Commission has proposed to determine that eligible contract participants, as defined in section 1a(18) of the Act or in Commission regulation 1.3(m), should be considered appropriate persons for purposes of the Proposed Exemption.<sup>385</sup> The Commission recognizes that the market participant eligibility standards

<sup>370</sup> 17 CFR 23.410(a)–(b), 32.4 and part 180.

<sup>371</sup> 17 CFR part 180.

<sup>372</sup> See Petition at 33–34. Petitioners requested relief from "all provisions of the Act and Commission regulations, except in each case sections 4b, 4o, 6(c) and 9(a)(3) of the Act to the extent that these sections prohibit fraud in connection with transactions subject to the Act, or manipulation of the price of any swap or contract for the sale of a commodity in interstate commerce or for future delivery on or subject to the rules of a registered entity, and from the requirement to provide information to the Commission as expressly permitted by their respective protocols or as provided under section 720 of the Dodd-Frank Wall Street Reform and Consumer Protection Act." The Proposed Exemption simply would preserve the Commission's authority under the delineated provisions and their implementing regulations without caveat, in order to avoid ambiguity as to what conduct remains prohibited.

<sup>373</sup> See, e.g., Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Kansas City Board of Trade Clearing Corporation to Clear Over-the-Counter Wheat Calendar Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Swaps and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 75 FR 34983, 34985 (2010).

<sup>374</sup> Petition at 5–9.

<sup>375</sup> *Id.* at 6.

<sup>376</sup> *Id.* at 9.

<sup>377</sup> 7 U.S.C. 6(c).

<sup>378</sup> For example, the transactions that included with the scope of the Proposed Exemption appear to be limited to those tied to the physical capacity of the Petitioners' electricity grids. Petition at 6–8, 11.

<sup>379</sup> The Commission is currently reviewing two supplemental petitions. Specifically, ISO NE has filed a supplemental request for an exemption pursuant to section 4(c)(6) for "IBT" Transactions. See In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by ISO New England Inc. (Apr. 30, 2012), available at <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/iso-ne4crequest.pdf>. CAISO has filed a similar request for "inter-scheduling coordinator trades" or "inter-SC trades." See In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by California Independent System Operator Corporation (May 30, 2012), available at <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/caiso4crequest.pdf>.

<sup>380</sup> 7 U.S.C. 6(c)(3)(A)–(J).

<sup>381</sup> 7 U.S.C. 1a(18).

<sup>382</sup> 17 CFR 1.3(m).

<sup>383</sup> 7 U.S.C. 6(c).

<sup>384</sup> 7 U.S.C. 6(c)(3).

<sup>385</sup> See discussion in section V.B.3. *supra*.

of an individual RTO or ISO may not be coextensive with the criteria required by sections 4(c)(3)(A) through (J) or section 1a(18) of the Act and, therefore, there may be certain RTO or ISO participants engaging in transactions of the type described in the Proposed Exemption that would not qualify for the Proposed Exemption. In particular, the Commission is interested in considering market participants that “active[ly] participat[e] in the generation, transmission or distribution of electricity” that are not ECPs and do not fall within CEA section 4(c)(3)(A) through (J), who should nonetheless be included as appropriate persons pursuant to CEA section 4(c)(3)(K). Accordingly, the Commission has requested comment on whether the Commission should enlarge the list of appropriate persons for purposes of the exemption to include other types of entities identified in the Petition that satisfy alternative criteria. Any request to include additional entities should be accompanied by a description of the financial or other qualifications of such entities or the available regulatory protections that would render them comparable to the appropriate persons and eligible contract participants delineated in the Act. The Commission also is interested in receiving comments addressing whether and how market participants who satisfy substitute qualifications would be capable of bearing the risks associated with the relevant markets.

In order to be eligible for the exemption that would be provided by the Proposed Exemption, the agreement, contract or transaction also must be offered or sold pursuant to the “tariff” of a “requesting party” and the tariff must have been approved or permitted to take effect by the PUCT (in the case of ERCOT) or by FERC (in the case of all other Petitioners). This requirement reflects the range of the Commission’s authority as set forth in section 4(c)(6)<sup>386</sup> of the CEA and is consistent with the scope of the relief requested.<sup>387</sup> “Requesting Party” is defined to include the six Petitioners (*i.e.*, CAISO, ERCOT, ISO NE., MISO, NYSO and PJM) and any of their respective successors in interest. To account for differences in terminology used by such entities and their respective regulators, the term “tariff” is defined to include a “tariff, rate schedule or protocol.”

Consistent with the range of the statutory authority explicitly provided by CEA section 4(c), the Proposed Exemption would extend the exemption

to the agreements, contracts or transactions set forth therein and “any person or class of persons offering, entering into, rendering advice or rendering other services with respect to” such transactions. In addition, for as long as the Proposed Exemption would remain in effect, each of the six named Petitioners<sup>388</sup> would be able to avail themselves of the Proposed Exemption with respect to all four expressly-identified groups of products, regardless of whether or not the particular Petitioner offers the particular product at the present time. That is, a Petitioner would not be required to request future supplemental relief for a product that it does not currently offer, but that qualifies as one of the four types of transactions in the Proposed Exemption. All six Petitioners that filed the consolidated Petition requested an exemption of the scope provided and the Petition was analyzed accordingly.<sup>389</sup> The exemption would not extend, however, to any RTO or ISO that was not a party to the Petition under consideration because the Commission has not reviewed the tariffs or business practices of any other RTO or ISO and, therefore, cannot discern whether extending the Proposed Exemption to it would be equally congruent with the public interest and the purposes of the Act. The Commission has determined to issue one Proposed Exemption in lieu of the six separate orders requested by Petitioners.<sup>390</sup> In light of the fact that there are “[congruents] in [the Petitioners’] markets and operations,” and the fact that the exemption for each would be coextensive, as requested by the Petitioners,<sup>391</sup> it would appear that

<sup>388</sup> CAISO, ERCOT, ISO NE., MISO, NYSO and PJM.

<sup>389</sup> The Requestors note that it is “reasonable to expect that each ISO/RTO will, over time, consider offering under its own individual tariff one or more classes of contract, agreement and transaction that is currently offered under any other ISO/RTO tariff,” and accordingly request that exemption be granted to all requestors for transactions that are currently offered by any of them. Petition at 6.

<sup>390</sup> See Petition at 2.

<sup>391</sup> See Petition at 6:

“While the ISOs/RTOs operate pursuant to individual tariffs, they share many commonalities in their markets and operations. Although the current market structures of the individual ISOs/RTOs may vary, it is reasonable to expect that each ISO/RTO will, over time, consider offering under its own individual tariff one or more classes of contract, agreement or transaction that is currently offered under any other ISO/RTO tariff. We thus request that each individual exemptive Order apply collectively to each class of contract, agreement or transaction provided by the ISOs/RTOs. This will provide the appropriate breadth to the exemptive Order so that an individual Requestor will not be required to seek future amendments to offer or enter into contracts, agreements or transactions that are currently offered by any other Requestor.”

issuing six separate but identical Proposed Exemptions that raise the same issues and questions is unnecessary, could result in needlessly duplicative comments and would be an inefficient use of Commission resources. Any concerns that the public may have with respect to providing relief to any particular Petitioner can be adequately explained in a sole comment on the consolidated Proposed Exemption. The Commission disagrees with the Petitioners’ assertion that distinct orders are necessary because a solitary order would require each Petitioner to submit an individual application to obtain supplemental relief or to amend the relief provided thereby. To the contrary, the Commission confirms that individual Petitioners (or other entities) may file individual requests for supplemental exemptions and the Commission may, consistent with the criteria under CEA section 4(c)(6), issue further exemptions either individually or in the collective, as necessary or appropriate and in accordance with the facts and circumstances presented.<sup>392</sup> In fact, ISO NE and CAISO have filed individual requests for supplemental relief that currently are under review by Commission staff.<sup>393</sup>

The Proposed Exemption indicates that, when a final order is issued, it would be made effective immediately. The Commission proposes, however, three conditions precedent to the issuance of a final exemption that may be applicable to one or more specific Petitioners. First, the Commission proposes to refrain from issuing a final order to a specific RTO or ISO unless the RTO or ISO has adopted all of requirements set forth in FERC regulation 35.47;<sup>394</sup> such tariff provisions have been approved or have been permitted to take effect by FERC or PUCT, as applicable; and such tariff provisions, have become effective and have been fully implemented by the particular RTO or ISO. That is, the Commission is considering requiring

<sup>392</sup> Section 4(c) permits the Commission to issue an exemption “on its own initiative or on application of any person.” 7 U.S.C. 4(c)(1).

<sup>393</sup> See In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by ISO New England Inc. (Apr. 30, 2012), available at <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/iso-ne4crequest.pdf>. CAISO has filed a similar request for “inter-scheduling coordinator trades” or “inter-SC trades.” See In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by California Independent System Operator Corporation (May 30, 2012), available at <http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/caiso4crequest.pdf>.

<sup>394</sup> 18 CFR 35.47.

<sup>386</sup> See the discussion in section V.A. *supra*.

<sup>387</sup> Petition at 2–3.

that any policies and procedures that the RTO or ISO has adopted in order to comply with the obligations contained in FERC regulation 35.47 be in actual practice. Petitioners note that their structure and operations are different from the DCOs registered with the Commission.<sup>395</sup> However, FERC Regulation 35.47 is a set of credit policies purpose-built for RTOs and ISOs.

The Commission's statutorily required determination that the Proposed Exemption is consistent with the public interest and the purposes of the Act was supported, in considerable part, on the grounds that the credit reform policies mandated by FERC regulation 35.47<sup>396</sup> were consistent with the regulatory objectives of several of the core principles applicable to DCOs and the expectation that the Petitioners regulated by FERC would put those mandates into practice prior to the issuance of the exemption. Moreover, while ERCOT is not subject to regulation by FERC, the fact that these mandates were developed specifically for RTOs and ISOs suggests that holding ERCOT to these standards may well be appropriate.

While all Petitioners have represented that they have fulfilled certain requirements of FERC regulation 35.47, it appears that material gaps in complete execution remain.<sup>397</sup> For example, due to requested extensions of time for compliance, certain Petitioners have only recently submitted tariffs to comply with FERC regulation 35.47(d) (accordingly, the tariffs remain subject to FERC approval) and, in some cases, full implementation is not expected until 2013.<sup>398</sup> Because the implementation of the FERC credit reform policies is central to the Commission's determination that this exemption is in the public interest, it may well be that requiring Petitioners to have fully implemented such reforms prior to the issuance of a final order is necessary and appropriate.

Second, the Commission proposes as an additional prerequisite to the issuance of an exemption to an RTO or ISO that the RTO or ISO provide a well-reasoned legal opinion or memorandum from outside counsel that, in the Commission's sole discretion, provides

the Commission with assurance that the netting arrangements contained in the approach selected by the particular Petitioner to satisfy the obligations contained in FERC regulation 35.47(d) will, in fact, provide the Petitioner with enforceable rights of setoff against any of its market participants under title 11 of the United States Code<sup>399</sup> in the event of the bankruptcy of the market participant.<sup>400</sup>

There appears to be strong support for the proposition that a central counterparty structure would achieve the mutuality of obligation necessary for enforceable rights of setoff for the central counterparty, and Petitioners have represented that they either are, or plan on becoming, central counterparties.<sup>401</sup> The Commission is concerned, however, that there is some ambiguity as to how individual Petitioners are interpreting the single counterparty requirement contained in FERC regulation 35.47(d) and whether the single counterparty structure chosen by individual Petitioners would provide enforceable setoff rights. For example, the Petition states that ERCOT "expects to adopt the central counterparty structure; however, this structure will not involve clearing, as that term applies to a designated clearing organization or swaps execution facility (*i.e.*, the central counterparty does not act as a financial intermediary, nor is there any novation of transactions to a central counterparty)."<sup>402</sup> The Commission shares FERC's goal of ensuring that, in the event of bankruptcy of a participant, Petitioners are not prohibited from offsetting accounts receivable against accounts payable. Consistent with that goal and to mitigate any ambiguity regarding the bankruptcy protections provided by the central counterparty arrangements adopted by particular Petitioners, the Commission is proposing to require, as a prerequisite to the granting of the 4(c) request to a particular Petitioner, that the Commission be provided with a legal opinion or memoranda of counsel, applicable to the tariffs and operations of that Petitioner, that provides the Commission with assurance that the approach selected by the Petitioner to satisfy the obligations contained in FERC regulation 35.47(d) will provide the Petitioner with rights of setoff,

enforceable against any of its market participants under title 11 of the United States Code in the event of the bankruptcy of the market participant. The Commission would retain sole discretion to accept or reject the adequacy of the legal opinion or memoranda for purposes of issuing the exemption. As noted above, the Commission is seeking comment on the preconditions set forth above and the costs and benefits thereof.

Third, the Proposed Exemption would be conditioned, as applicable to ERCOT, on the completion of an information sharing agreement, acceptable to the Commission, between the PUCT and the Commission. As with the 2005 Memorandum of Understanding ("MOU") between the Commission and FERC, as discussed below, the Commission would expect the terms of a CFTC-PUCT MOU to provide that PUCT will furnish information in its possession to the CFTC upon its request and will notify the CFTC if any information requested by it is not in PUCT's possession. As noted above, the Commission is seeking comment on the preconditions set forth above and the costs and benefits thereof.

The Proposed Exemption also contains certain information-sharing conditions. First, the Proposed Exemption is expressly conditioned upon the existing information sharing arrangement between the Commission and FERC, and, as noted above, the completion of an information sharing agreement between the Commission and PUCT. The Commission notes that the CFTC and FERC executed a MOU in 2005 pursuant to which the agencies have shared information successfully.<sup>403</sup> The terms of the CFTC-FERC MOU provide that FERC will furnish information in its possession to the CFTC upon its request and will notify the CFTC if any information requested by it is not in FERC's possession.

The Petitioners recognize the need to be responsive to Commission requests for information and "to assist the Commission as necessary in fulfilling its mission under the Act"<sup>404</sup> and Petitioners have indicated their intent to be responsive to requests for information by the Commission that will further enable the Commission to perform its regulatory and enforcement duties.<sup>405</sup> Petitioners caveat this assistance, however, by stating that "certain of the tariffs may require that

<sup>395</sup> See Petition Attachments at 1.

<sup>396</sup> 18 CFR 35.47.

<sup>397</sup> See generally FERC Order 741 Implementation Chart.

<sup>398</sup> See, e.g., FERC Order 741 Implementation Chart at 6 (stating that ISO NE submitted a package of tariff changes with FERC to establish itself as the central counterparty for market participant transactions. The filing was made with a requested effective date of January 1, 2013).

<sup>399</sup> See 11 U.S.C. 553.

<sup>400</sup> See text at n. 122 and text at n. 208 *supra*.

<sup>401</sup> The Commission also notes that not all of the central counterparty arrangements proposed by Petitioners have been approved by their respective regulators and/or become effective and, accordingly, are potentially subject to change. See, e.g., FERC Order 741 Implementation Chart at 5-6.

<sup>402</sup> Petition Attachments at 28.

<sup>403</sup> FERC MOU (Oct. 12, 2005) available at <http://www.ferc.gov/legal/maj-ord-reg/mou/mou-33.pdf>.

<sup>404</sup> Petition at 25.

<sup>405</sup> *Id.* at 25-26.

an ISO/RTO notify its members prior to providing information in response to a subpoena.”<sup>406</sup> This notice requirement could significantly compromise the Commission’s enforcement efforts as there are likely to be situations where it would be neither prudent nor advisable for an entity under investigation by the Commission to learn of the investigation prior to Commission notification to the entity. Accordingly, the Proposed Exemption includes a second information-sharing condition that requires that neither the tariffs nor any other governing documents of the particular RTO or ISO pursuant to whose tariff the agreement, contract or transaction is to be offered or sold, shall include any requirement that the RTO or ISO notify its members prior to providing information to the Commission in response to a subpoena or other request for information or documentation. The Commission specifically requests comment on this condition and as to whether there may be an alternative condition that the Commission might use to achieve the same result.

Finally, the Proposed Exemption expressly notes that it is based upon the representations made in the Petition and in the supporting materials provided to the Commission by the Petitioners and their counsel and that any material change or omission in the facts and circumstances pursuant to which the Proposed Exemption is granted might require the Commission to reconsider its finding that the exemption contained therein is appropriate and/or in the public interest. The Commission has also explicitly reserved the discretionary authority, to suspend, terminate or otherwise modify or restrict the exemption provided. The reservation of these rights is consistent with prior Commission practice and is necessary to provide the Commission with the flexibility to address relevant facts or circumstances as they arise.

#### B. Proposed Exemption

Consistent with the determinations set forth above, the Commission hereby proposes to issue the following Order:

Pursuant to its authority under section 4(c)(6), in accordance with CEA sections 4(c)(1) and (2), of the Commodity Exchange Act (“CEA” or “Act”), the Commodity Futures Trading Commission (“CFTC” or “Commission”).

1. Exempts, subject to the conditions and limitations specified herein, the purchase or sale of the electricity-related agreements, contracts, and

transactions that are specified in paragraph 2 of this Order and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect thereto, from all provisions of the CEA, except, in each case, the Commission’s general anti-fraud, anti-manipulation and enforcement authority under the CEA, including, but not limited to, CEA sections 2(a)(1)(B), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13 and any implementing regulations promulgated thereunder including, but not limited to, Commission regulations 23.410(a) and (b), 32.4 and part 180.

2. *Scope.* This exemption applies only to agreements, contracts and transactions that satisfy all of the following requirements:

a. The agreement, contract or transaction is for the purchase and sale of one of the following electricity-related products:

(1) The “Financial Transmission Rights” defined in paragraph 5(a) of this Order, except that the exemption shall only apply to such Financial Transmission Rights where:

(a) Each Financial Transmission Right is linked to, and the aggregate volume of Financial Transmission Rights for any period of time is limited by, the physical capability (after accounting for counterflow) of the electricity transmission system operated by a Requesting Party offering the contract, for such period;

(b) The Requesting Party serves as the market administrator for the market on which the Financial Transmission Rights are transacted;

(c) Each party to the transaction is a member of the Requesting Party (or is the Requesting Party itself) and the transaction is executed on a market administered by that Requesting Party; and

(d) The transaction does not require any party to make or take physical delivery of electricity.

(2) “Energy Transactions” as defined in paragraph 5b of this Order.

(3) “Forward Capacity Transactions,” as defined in paragraph 5c of this Order.

(4) “Reserve or Regulation Transactions” as defined in paragraph 5d of this Order.

b. All parties to the agreement, contract or transaction are “appropriate persons,” as defined sections 4(c)(3)(A) through (J) of the CEA or “eligible contract participants” as defined in section 1a(18)(A) of the CEA and in Commission regulation 1.3(m).

c. The agreement, contract or transaction is offered or sold pursuant to a Requesting Party’s tariff and that tariff

has been approved or permitted to take effect by:

(1) In the case of the Electricity Reliability Council of Texas (“ERCOT”), the Public Utility Commission of Texas (“PUCT”) or

(2) In the case of all other Requesting Parties, the Federal Energy Regulatory Commission (“FERC”).

3. *Applicability to particular regional transmission organizations (“RTOs”) and independent system operators (“ISOs”).* Subject to the conditions contained in the Order, the Order applies to all Requesting Parties with respect to the transactions described in paragraph 2 of this Order.

4. *Conditions.* The exemption provided by this Order is expressly conditioned upon the following:

a. *Information sharing:* With respect to ERCOT, information sharing arrangements between the Commission and PUCT that are acceptable to the Commission are executed and continue to be in effect. With respect to all other Requesting Parties, information sharing arrangements between the Commission and FERC that are acceptable to the Commission continue to be in effect.

b. *Notification of requests for information:* With respect to each Requesting Party, neither the tariffs nor any other governing documents of the particular RTO or ISO pursuant to whose tariff the agreement, contract or transaction is to be offered or sold, shall include any requirement that the RTO or ISO notify its members prior to providing information to the Commission in response to a subpoena or other request for information or documentation.

5. *Definitions.* The following definitions shall apply for purposes of this Order:

a. A “Financial Transmission Right” is a transaction, however named, that entitles one party to receive, and obligates another party to pay, an amount based solely on the difference between the price for electricity, established on an electricity market administered by a Requesting Party, at a specified source (*i.e.*, where electricity is deemed injected into the grid of a Requesting Party) and a specified sink (*i.e.*, where electricity is deemed withdrawn from the grid of a Requesting Party). The term “Financial Transmission Rights” includes Financial Transmission Rights and Financial Transmission Rights in the form of options (*i.e.*, where one party has only the obligation to pay, and the other party only the right to receive, an amount as described above).

b. “Energy Transactions” are transactions in a “Day-Ahead Market”

<sup>406</sup> *Id.* at 26.

or "Real-Time Market," as those terms are defined in paragraphs 5e and 5f of this Order, for the purchase or sale of a specified quantity of electricity at a specified location (including "Demand Response," as defined in paragraph 5c(2) of this Order, where:

(1) The price of the electricity is established at the time the transaction is executed;

(2) Performance occurs in the Real-Time Market by either

(a) Delivery or receipt of the specified electricity, or

(b) A cash payment or receipt at the price established in the Real-Time Market; and

(3) The aggregate cleared volume of both physical and cash-settled energy transactions for any period of time is limited by the physical capability of the electricity transmission system operated by a Requesting Party for that period of time.

c. "Forward Capacity Transactions" are transactions in which a Requesting Party, for the benefit of load-serving entities, purchases any of the rights described in subparagraphs (1), (2) and (3) below. In each case, to be eligible for the exemption, the aggregate cleared volume of all such transactions for any period of time shall be limited to the physical capability of the electricity transmission system operated by a Requesting Party for that period of time.

(1) "Generation Capacity," meaning the right of a Requesting Party to:

(a) Require certain sellers to maintain the interconnection of electric generation facilities to specific physical locations in the electric-power transmission system during a future period of time as specified in the Requesting Party's Tariff;

(b) Require such sellers to offer specified amounts of electric energy into the Day-Ahead or Real-Time Markets for electricity transactions; and

(c) Require, subject to the terms and conditions of a Requesting Party's Tariff, such sellers to inject electric energy into the electric power transmission system operated by the Requesting Party;

(2) "Demand Response," meaning the right of a Requesting Party to require that certain sellers of such rights curtail consumption of electric energy from the electric power transmission system operated by a Requesting Party during a future period of time as specified in the Requesting Party's Tariff; or

(3) "Energy Efficiency," meaning the right of a Requesting Party to require specific performance of an action or actions that will reduce the need for Generation Capacity or Demand Response Capacity over the duration of

a future period of time as specified in the Requesting Party's Tariff.

d. "Reserve or Regulation Transactions" are transactions:

(1) In which a Requesting Party, for the benefit of load-serving entities and resources, purchases, through auction, the right, during a period of time as specified in the Requesting Party's Tariff, to require the seller of such right to operate electric facilities in a physical state such that the facilities can increase or decrease the rate of injection or withdrawal of a specified quantity of electricity into or from the electric power transmission system operated by the Requesting Party with:

(a) Physical performance by the seller's facilities within a response time interval specified in a Requesting Party's Tariff (Reserve Transaction); or

(b) Prompt physical performance by the seller's facilities (Area Control Error Regulation Transaction);

(2) For which the seller receives, in consideration, one or more of the following:

(a) Payment at the price established in the Requesting Party's Day-Ahead or Real-Time Market, as those terms are defined in paragraphs 5f and 5g of this Order, price for electricity applicable whenever the Requesting Party exercises its right that electric energy be delivered (including Demand Response," as defined in paragraph 5c(2) of this Order);

(b) Compensation for the opportunity cost of not supplying or consuming electricity or other services during any period during which the Requesting Party requires that the seller not supply energy or other services;

(c) An upfront payment determined through the auction administered by the Requesting Party for this service;

(d) An additional amount indexed to the frequency, duration, or other attributes of physical performance as specified in the Requesting Party's Tariff; and

(3) In which the value, quantity, and specifications of such transactions for a Requesting Party for any period of time shall be limited to the physical capability of the electricity transmission system operated by the Requesting Party for that period of time.

e. "Day-Ahead Market" means an electricity market administered by a Requesting Party on which the price of electricity at a specified location is determined, in accordance with the Requesting Party's Tariff, for specified time periods, none of which is later than the second operating day following the day on which the Day-Ahead Market clears.

f. "Real-Time Market" means an electricity market administered by a Requesting Party on which the price of electricity at a specified location is determined, in accordance with the Requesting Party's tariff, for specified time periods within the same 24-hour period.

g. "Requesting Party" means California Independent Service Operator Corporation ("CAISO"); ERCOT; ISO New England Inc. ("ISO NE"); Midwest Independent Transmission System Operator, Inc. ("MISO"); New York Independent System Operator, Inc. ("NYISO") or PJM Interconnection, L.L.C. ("PJM"), or any successor in interest to any of the foregoing.

h. "Tariff." Reference to a Requesting Party's "tariff" includes a tariff, rate schedule or protocol.

i. "Petition" means the consolidated petition for an exemptive order under 4(c)(6) of the CEA filed by CAISO, ERCOT, ISO NE., MISO, NY ISO and PJM on February 7, 2012, as later amended.

6. *Effective Date.* This Order is effective immediately.

This order is based upon the representations made in the consolidated petition for an exemptive order under 4(c) of the CEA filed by the Requesting Parties<sup>407</sup> and supporting materials provided to the Commission by the Requesting Parties and their counsel. Any material change or omission in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its finding that the exemption contained therein is appropriate and/or in the public interest. Further, the Commission reserves the right, in its discretion, to revisit any of the terms and conditions of the relief provided herein, including but not limited to, making a determination that certain entities and transactions described herein should be subject to the Commission's full

<sup>407</sup> *In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by California Independent Service Operator Corporation ("CAISO"); In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by the Electric Reliability Council of Texas, Inc. ("ERCOT"); In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by ISO New England Inc. ("ISO NE"); In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Midwest Independent Transmission System Operator, Inc. ("MISO"); In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by New York Independent System Operator, Inc. ("NYISO"); and In the Matter of the Petition for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by PJM Interconnection, L.L.C. ("PJM") (Feb. 7, 2012, as amended June 11, 2012).*

jurisdiction, and to condition, suspend, terminate or otherwise modify or restrict the exemption granted in this order, as appropriate, upon its own motion.

## IX. Related Matters

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act<sup>408</sup> (“RFA”) requires that agencies consider whether the Proposed Exemption will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The Commission believes that the Proposed Exemption will not have a significant economic impact on a substantial number of small entities. The Proposed Exemption detailed in this release would affect organizations including Petitioners and eligible contract participants (“ECPs”).<sup>409</sup> The Commission has previously determined that ECPs are not “small entities” for purposes of the RFA.<sup>410</sup> In addition, the Commission believes that Petitioners should not be considered small entities based on the central role they play in the operation of the electronic transmission grid and the creation of organized wholesale electric markets that are subject to FERC and PUCT regulatory oversight,<sup>411</sup> analogous to

functions performed by DCMs and DCOs, which the Commission has determined not to be small entities.<sup>412</sup>

Accordingly, the Commission does not expect the Proposed Exemption to have a significant impact on a substantial number of entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the Proposed Exemption would not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether the entities covered by this Proposed Exemption should be considered small entities for purposes of the RFA, and, if so, whether there is a significant impact on a substantial number of entities.

### B. 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. 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 requires “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.” The PRA would not apply in this case given that the exemption would not impose any new recordkeeping or information collection requirements, or other collections of information on ten or more persons that require approval of the Office of Management and Budget (“OMB”).

### C. Cost-Benefit Considerations

#### 1. Consideration of Costs and Benefits

##### a. Introduction

Section 15(a) of the CEA<sup>413</sup> requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. In proposing this exemption, the Commission is required by section 4(c)(6) to ensure the same is consistent with the public interest. In much the same way, section 15(a) further specifies that the costs and benefits shall be evaluated in light of 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 discretionary determinations with respect to the section 15(a) factors.

As discussed above, in response to a Petition from certain regional transmission organizations and independent system operators, the Commission is proposing to exempt specified transactions from the provisions of the CEA and Commission regulations with the exception of those prohibiting fraud and manipulation (*i.e.*, sections 2(a)(1)(B), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9 and 13 and any implementing regulations promulgated thereunder including, but not limited to, Commission regulations 23.410(a) and (b), 32.4 and part 180). The Proposed Exemption is transaction-specific—that is, it would exempt contracts, agreements and transactions for the purchase or sale of the limited set of electricity-related products that are offered or entered into in a market administered by a Petitioner pursuant to that Petitioner’s tariff or protocol for the purposes of allocating such Petitioner’s physical resources.

More specifically, the Commission is proposing to exempt from most provisions of the CEA certain “financial transmission rights,” “energy transactions,” “forward capacity transactions,” and “reserve or regulation transactions,” as those terms are defined in the proposed Order, if such transactions are offered or entered into pursuant to a tariff under which a Petitioner operates that has been approved by FERC or the Public Utility

<sup>408</sup> 5 U.S.C. 601 et seq.

<sup>409</sup> Under CEA section 2(e), only ECPs are permitted to participate in a swap subject to the end-user clearing exception.

<sup>410</sup> See *Opting Out of Segregation*, 66 FR 20740 at 20743, Apr. 25, 2001.

<sup>411</sup> See RFA analysis as conducted by FERC regarding the 5 Petitioners, CAISO, NYISO, PJM, MISO and ISO NE., <https://www.federalregister.gov/articles/2011/10/26/2011-27626/enhancement-of-electricity-market-surveillance-and-analysis-through-ongoing-electronic-delivery-of-h-17>.

Commission staff also performed an independent RFA analysis based on Subsector 221 of Sector 22 (utilities companies) which defines any small utility corporation as one that does not generate more than 4 million of megawatts of electricity per year, and Subsector 523 of Sector 52 (Securities, Commodity Contracts, and Other Financial Investments and Related Activities) of the SBA, 13 CFR 121.201 (1–11 Edition), which identifies a small business size standard of \$7 million or less in annual receipts. Staff concludes that none of the Petitioners is a small entity, based on the following information:

MISO reports 594 million megawatt hours per year, <https://www.midwestiso.org/Library/Repository/Communication%20Material/Corporate/Corporate%20Fact%20Sheet.pdf>;

ERCOT reports 335 million megawatt hours per year, [http://www.ercot.com/content/news/presentations/2012/ERCOT\\_Quick\\_Facts\\_June\\_%202012.pdf](http://www.ercot.com/content/news/presentations/2012/ERCOT_Quick_Facts_June_%202012.pdf);

CAISO reports 200 million megawatts per year, [http://www.caiso.com/Documents/CompanyInformation\\_Facts.pdf](http://www.caiso.com/Documents/CompanyInformation_Facts.pdf);

NYISO reports 17 million megawatts per month, which calculates to 204 megawatts per year, [http://www.nyiso.com/public/about\\_nyiso/nyisoataglance/index.jsp](http://www.nyiso.com/public/about_nyiso/nyisoataglance/index.jsp);

PJM reports \$35.9 billion billed in 2011, <http://pjm.com/markets-and-operations.aspx>; and

ISO NE reports 32,798 gigawatt hours in the first quarter of 2011, which translates into almost 33 million megawatts for the first quarter of 2011, [http://www.iso-ne.com/markets/mkt\\_anlys\\_rpts/qtrly\\_mktops\\_rpts/2012/imm\\_q1\\_2012\\_qmr\\_final.pdf](http://www.iso-ne.com/markets/mkt_anlys_rpts/qtrly_mktops_rpts/2012/imm_q1_2012_qmr_final.pdf).

<sup>412</sup> See A New Regulatory Framework for Clearing Organizations, 66 FR 45604, 45609, Aug. 29, 2001(DCOs); Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18618–18619, Apr. 30, 1982 (DCMs).

<sup>413</sup> 7 U.S.C. 19(a).

Commission of Texas, as applicable. The Proposed Exemption extends to any persons (including Petitioners, their members and their market participants) offering, entering into, rendering advice, or rendering other services with respect to such transactions. Important to the Commission's Proposed Exemption is the Petitioners' representations that the aforementioned transactions are: (i) Tied to the physical capacity of the Petitioner's electricity grids; (ii) used to promote the reliable delivery of electricity; and (iii) are intended for use by commercial participants that are in the business of generating, transmitting and distributing electricity. In other words, these are not purely financial transactions; rather, they are inextricably linked to, and limited by, the capacity of the grid to physically deliver electricity.

In the discussion that follows, the Commission considers the costs and benefits of the proposed Order to the public and market participants generally, including the costs and benefits of the conditions precedent that must be satisfied before a Petitioner may claim the exemption.

#### b. Proposed Baseline

The Commission's proposed baseline for consideration of the costs and benefits of this Proposed Exemption are the costs and benefits that the public and market participants (including Petitioners) would experience in the absence of this proposed regulatory action. In other words, the proposed baseline is an alternative situation in which the Commission takes no action, meaning that the transactions that are the subject of this Petition would be required to comply with all of the CEA and Commission regulations, as may be applicable. In such a scenario, the public and market participants would experience the full benefits and costs related to the CEA and Commission regulations, but as discussed in detail above, the transactions would still be subject to the congruent regulatory regimes of the FERC and PUCT. In areas where the Commission believed additional requirements were necessary to ensure the public interest, the Commission proposed additional requirements (e.g., the requirement that Petitioners submit a memorandum or opinion of counsel to the Commission confirming the enforceability of the Petitioners' netting arrangements in the event of a bankruptcy of a participant).

The Commission also considers the regulatory landscape as it exists outside the context of the Dodd-Frank Act's enactment. Here too, it is important to highlight Petitioners' representations

that each of the transactions for which an exemption is requested is already subject to a long-standing, comprehensive regulatory framework for the offer and sale of such transactions established by FERC, or in the case of ERCOT, the PUCT. For example, the costs and benefits attendant to the Commission's condition that transactions be entered into between "appropriate persons" as described in CEA section 4(c)(3) has an analog outside the context of the Dodd-Frank Act in FERC's minimum criteria for RTO market participants as set forth in FERC Order 741.

In the discussion that follows, where reasonably feasible, the Commission endeavors to estimate quantifiable dollar costs of the Proposed Exemption. The benefits of the Proposed Exemption, as well as certain costs, however, are not presently susceptible to meaningful quantification. Most of the costs arise from limitations on the scope of the proposed Order, and many of the benefits arise from avoiding defaults and their implications that are clearly large in magnitude, but impracticable to estimate. Where it is unable to quantify, the Commission discusses proposed costs and benefits in qualitative terms.

#### c. Costs

The Proposed Order is exemptive and would provide potentially eligible transactions with relief from the requirements of the CEA and attendant Commission regulations. As with any exemptive rule or order, the proposal is permissive, meaning that Petitioners were not required to request it and are not required to rely on it. Accordingly, the Commission assumes that Petitioners required and would rely on the Proposed Exemption only if the anticipated benefits warrant the costs of the same. Here, the Proposed Exemption identifies certain conditions precedent to the grant of the Proposed Exemption. The Commission is of the view that, as a result of the conditions, Petitioners, market participants and the public would experience minimal, if any, ongoing, incremental costs as a result of these conditions. This is so because, as Petitioners certify pursuant to CFTC Rule 140.99(c)(3)(ii), the attendant conditions are substantially similar to requirements that Petitioners and their market participants already incur in complying with FERC or PUCT regulation.

The first condition—that all parties to the agreements, contracts or transactions that are covered by the Proposed Exemption must be either "appropriate persons," as such term is defined in sections 4(c)(3)(A) through (J) of the Act,

or "eligible contract participants," as such term is defined in section 1a(18)(A) of the Act and in Commission regulation 1.3(m)—should not impose any significant, incremental costs because Petitioners must already incur costs in complying with their existing legal and regulatory obligations under the FPA and FERC or PUCT regulations, which mandate that only eligible market participants may engage in the transactions that are the subject of this proposal, as explained in section V.B.3. above.

The second is that the agreements, contracts or transactions that are covered by the Proposed Exemption must be offered or sold pursuant to a Petitioner's tariff, which has been approved or permitted to take effect by: (1) In the case of ERCOT, the PUCT or; (2) in the case of all other Petitioners, FERC. This is a statutory requirement for the exemption. *See* CEA 4(c)(6)(A), (B). Moreover, requiring that Petitioners' not operate outside their tariff requirements derives from existing legal requirements and is not a cost attributable to this proposal.

Third, as described in section V.B.1. above, FERC and PUCT impose on their respective Petitioners, and their market monitors, various information management requirements. These existing requirements are not materially different from the condition that none of a Petitioner's tariffs or other governing documents may include any requirement that the Petitioner notify a member prior to providing information to the Commission in response to a subpoena or other request for information or documentation. However, certain existing tariffs (see footnote 406 and accompanying text) may not currently meet the condition; therefore the Commission requests comment as to whether this condition imposes a significant burden or increase in cost on Petitioners with such tariffs, and whether there are alternative conditions that may be used to achieve a similar result. Further, Petitioners have agreed to provide any information to the Commission upon request that will further enable the Commission to perform its regulatory and enforcement duties. While the Commission is mindful that the process of responding to subpoenas or requests for information involves costs, such subpoenas and requests for information, and thus the associated costs, are independent of the current proposed Order.

Fourth, information sharing arrangements that are satisfactory to the Commission between the Commission and FERC, and the Commission and PUCT, must be in full force and effect

is not a cost to Petitioners or to other members of the public but, in the case of FERC, has been an inter-agency norm since 2005. Moreover, and with respect to the proposed condition that would require the Commission and PUCT to enter into an information sharing arrangement, the sharing of information between government agencies is an efficient means of reducing governmental costs.

Finally, the Commission is proposing to require, as a prerequisite to the granting of the 4(c)(6) request to a particular Petitioner, that the Petitioner provide the Commission with a legal opinion or memoranda of counsel that provides the Commission with assurance that the approach selected by the Petitioner to satisfy the obligations contained in FERC regulation 35.47(d) will provide the Petitioner with enforceable rights of setoff against any of its market participants under title 11 of the United States Code in the event of the bankruptcy of the market participant. For instance, for transactions in a DCO context, the DCO is clearly the central counterparty. In the case of most ISOs and RTOs, there has been some ambiguity in this regard. As a result of this ambiguity, in the event of the bankruptcy of a participant, there is a concern that ISOs and RTOs may be liable to pay a bankrupt participant for transactions in which that participant is owed funds, without the ability to net amounts owed by the market participant in a bankruptcy, despite the fact that the tariffs submitted by the Petitioners to FERC include explicit language permitting set-off and netting.<sup>414</sup> As FERC expressed in the FERC Credit Rulemaking and the FERC Order on Rehearing, there is a risk that the explicit tariff language may be insufficient to protect the Petitioners in bankruptcy, and even if this risk were to be at a low probability of manifestation, there would be a high cost to market participants and the stability of the markets if it did so.<sup>415</sup> The Commission would require that the opinions or memoranda would be addressed to the Commission and would be signed on behalf of the law firm that is issuing the opinion, rather than by specific partners and/or associates. The Commission also would require the text of the opinion or memoranda to satisfy certain enumerated criteria. Based on the Laffey Matrix for 2012, assuming the opinion

is prepared by a seasoned attorney (with 20 plus years of legal practice), his/her hourly rate (\$734 per hour) multiplied by the amount of hours taken to prepare the opinion, will be the basic cost of such an opinion.<sup>416</sup> The Commission estimates that the cost of such memoranda will range between \$15,000 and \$30,000, part of which depends on the complexity of the analysis necessary to support the conclusion that the Petitioner's setoff rights are enforceable, and assuming that the opinion will take 20–40 hours to prepare.<sup>417</sup>

#### d. Benefits

In proposing this exemption, the Commission is required by section 4(c)(6) to ensure the same is consistent with the public interest. In much the same way, CEA section 15(a) requires that the Commission consider the benefits to the public of its action. In meeting its public interest obligations under both 4(c)(6) and 15(a), the Commission in sections V.B.1. and V.D. proposes a detailed consideration of the nature of the transactions and FERC and PUCT regulatory regimes, including whether the protections provided by those regimes are, at a minimum, congruent with the Commission's oversight of DCOs and SEFs.

This exercise is not rote; rather, in proposing that this exemption is in the public interest, the Commission's comprehensive action benefits the public and market participants in several substantive ways, as discussed below. In addition, by considering a single application from all Petitioners at the same time, and proposing to allow all provisions of the exemption to apply to all Petitioners and their respective market participants with respect to each category of electricity-related products described in the Petition, regardless of whether such products are offered or entered into at the current time pursuant to an individual Petitioner's tariff, this proposal provides a cost-mitigating, procedural efficiency. The Commission's proposal also reduces the potential need for future amendments to the final exemption in order for one Petitioner to offer or enter into the same type of transactions currently offered by another.

<sup>416</sup> The Court in *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354, 371 (D.D.C. 1983) ruled that hourly rates for attorneys practicing civil law in the Washington, DC metropolitan area could be categorized by years in practice and adjusted yearly for inflation. For 2012 Laffey Matrix rates, see [http://www.justice.gov/usao/dc/divisions/civil/Laffey\\_Matrix\\_2003-2012.pdf](http://www.justice.gov/usao/dc/divisions/civil/Laffey_Matrix_2003-2012.pdf).

<sup>417</sup> There are possibilities of economies of scale if multiple Petitioners share the same counsel in preparing these memoranda or opinions.

In more substantive terms, by requiring that the transactions at issue are, in fact, limited to those that are administered by the petitioning RTOs/ISOs, and are inextricably linked to the organized wholesale electricity markets that are subject to FERC and PUCT regulation and oversight, the Commission limits the scope of the proposed relief. In so doing, the proposal minimizes the potential that purely financial risk can accumulate outside the comprehensive regime for swaps regulation established by Congress in the Dodd-Frank Act and implemented by the Commission. The mitigation of such risk inures to the benefit of Petitioners, market participants and the public, especially Petitioners' members and electricity ratepayers.

The condition that only "appropriate persons" may enter the transactions that are the subject of this proposal benefits the public and market participants by ensuring that (1) only persons with resources sufficient to understand and manage the risks of the transactions are permitted to engage in the same, and (2) persons without such resources do not impose credit costs on other participants (and the ratepayers for such other participants). Further, the condition requiring that the transactions only be offered or sold pursuant to a FERC or PUCT tariff benefits the public by, for example, ensuring that the transactions are subject to a regulatory regime that is focused on the physical provision of reliable electric power, and also has credit requirements that are designed to achieve risk management goals congruent with the regulatory objectives of the Commission's DCO Core Principles. Absent these and other similar limitations on participant- and financial-eligibility, the integrity of the markets at issue could be compromised and members and ratepayers left unprotected from potentially significant losses. Moreover, the Commission's requirement that Petitioner's file an opinion of counsel regarding the right of set-off in bankruptcy provides a benefit in that the analytical process necessary to formulate such an opinion would highlight risks faced by the Petitioners, and permit them to adapt their structure and procedures in a manner best calculated to mitigate such risks, and thus helps ensure the orderly handling of financial affairs in the event a participant fails as a result of these transactions.

Finally, the Commission's retention of its authority to redress any fraud or manipulation in connection with the transactions at issue protects market participants and the public generally, as

<sup>414</sup> See, e.g., *In re Semcrude*, 399 B.R. 388, 393 (Bank. D. Del. 2009) (stating that "debts are considered 'mutual' only when 'they are due to and from the same persons in the same capacity.'").

<sup>415</sup> See 75 FR at 65955.

well as the financial markets for electricity products. For example, a condition precedent to the Proposed Exemption is effective information sharing arrangements between the FERC and the Commission, and PUCT and the Commission. Through such an arrangement, the Commission expects that it will be able to request information necessary to examine whether activity on Petitioners' markets is adversely affecting the Commission regulated markets. Further, the condition precedent that Petitioners not notify a member prior to providing the Commission with information will help maximize the effectiveness of the Commission's enforcement program.

#### e. Costs and Benefits as Compared to Alternatives

The Commission considered alternatives to the proposed rulemaking. For instance, the Commission could have chosen: (i) Not to propose an exemption or (ii), as Petitioners' requested, to provide relief for

"the purchase and sale of a product or service that is directly related to, and a logical outgrowth of, any [of Petitioners'] core functions as an ISO/RTO \* \* \* and all services related thereto." Regarding this latter request, the Commission understands the Petition as requesting relief for transactions not yet in existence. In this Order, the Commission proposes what it considers a measured approach—in terms of the implicated costs and benefits of the exemption—given its current understanding of transactions at issue.

Regarding the first alternative, the Commission considered that Congress, in the Dodd-Frank Act, required the Commission to exempt certain contracts, agreements or transactions from duties otherwise required by statute or Commission regulation by adding a new section that permits the Commission to exempt from its regulatory oversight agreements, contracts, or transactions traded pursuant to an RTO or ISO tariff that has been approved or permitted to take effect by FERC or a State regulatory authority, as applicable, where such exemption was in the public interest and consistent with the purposes of the CEA. Having concluded that the instant exemption meets those tests, the Commission proposes that a no exemption alternative would be inconsistent with Congressional intent and contrary to the public interest. At the same time, however, the Commission believes it would also be

inappropriate to adopt the second alternative.

The second alternative would extend the Proposed Exemption to all "logical outgrowths" of the transactions at issue. The Commission proposes that such an exemption would be contrary to the Commission's obligation under section 4(c) of the Act. As noted above, the authority to issue an exemption from the CEA provided by section 4(c) of the Act may not be automatically or mechanically exercised. Rather, the Commission is required to affirmatively determine, *inter alia*, that the exemption would be consistent with the public interest and the purposes of the Act.

With respect to the four groups of transactions detailed in the Proposed Exemption, the Commission's finding that the Proposed Exemption would be in the public interest and would be consistent with the purposes of the CEA is grounded, in part, on known transaction characteristics and market circumstances described in the Petition that may or may not be shared by other, as yet undefined, transactions engaged in by the Petitioners or other RTO or ISO market participants. Similarly, unidentified transactions might include novel features or have market implications or risks that are beyond evaluation at the present time, and are not present in the specified transactions.

#### 2. Consideration of CEA Section 15(a) Factors with respect to the Proposed Order

##### a. Protection of Market Participants and the Public

In proposing the exemption as it did, the Commission endeavored to provide relief that was in the public interest. A key component of that consideration is the assessment of how the Proposed Exemption protects market participants and the public. As discussed above, market participants and the public are protected by the existing regulatory structure that includes congruent regulatory goals, and by the four conditions placed upon the proposed relief by requiring, *inter alia*, that: (i) Only those with the financial wherewithal are permitted to engage in the transactions; (ii) the transactions at issue must be within the scope of a Petitioner's FERC or PUCT tariff; (iii) no advance notice to members of information requests to Petitioners from the Commission; and (iv) the Commission and FERC, and PUCT and the Commission, must have an information sharing arrangement in full force and effect. Additionally, the requirement that Petitioners file and opinion of counsel regarding

bankruptcy matters provides additional information from which the Commission may be assured that the netting that Petitioners rely upon as an integral part of their risk management is in fact enforceable.

##### b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

To the extent that the transactions at issue could have an indirect effect on the efficiency, competitiveness, and financial integrity of the markets subject to the Commission's jurisdiction, the relief is tailored in such a way as to mitigate any such effects. More specifically, the Proposed Exemption is limited to the transactions identified and defined herein. In this way, the Commission eliminates the potential that as-yet-unknown transactions not linked to the physicality of the electric system may be offered or sold under this Proposed Exemption. Further, the Commission's retention of its full enforcement authority will help ensure that any misconduct in connection with the exempted transactions does not jeopardize the financial integrity of the markets under the Commission's jurisdiction.

##### c. Price Discovery

As discussed above in section V.B.4, with respect to FTRs, Forward Capacity Transactions, and Reserve or Regulation Transactions, these transactions do not directly impact on transactions taking place on Commission regulated markets—they are not used for price discovery and are not used as settlement prices for other transactions in Commission regulated markets.

With respect to Energy Transactions, these transactions do have a relationship to Commission regulated markets because they can serve as a source of settlement prices for other transactions within Commission jurisdiction. Granting the Proposed Exemption, however, does not mean that these transactions will be unregulated. To the contrary, as explained in more detail above, Petitioners have market monitoring systems in place to detect and deter manipulation that takes place on their markets. Further, as noted above, the Commission retains all of its anti-fraud and anti-manipulation authority as a condition of the Proposed Exemption.

##### d. Sound Risk Management Practices

As with the other areas of cost-benefit consideration, the Commission's evaluation of sound risk management practices occurs throughout this release, notably in sections V.D.4.a. and V.E.7.a. which consider the Petitioners' risk

management policies and procedures, and the related requirements of FERC and PUCT (in particular, FERC Order 741 on Credit Policies), in light of the Commission's risk management requirements for DCOs and SEFs.

#### e. Other Public Interest Considerations

The Commission proposes that because these transactions are part of, and inextricably linked to, the organized wholesale, physical electricity markets that are subject to regulation and oversight of FERC or PUCT, as applicable, the Commission's Proposed Exemption, with its attendant conditions, requirements, and limitations, is in the public interest. In so considering, the Commission proposes that the public interest is best served if the Commission dedicates its resources to the day-to-day oversight of its registrants and the financial markets subject to the CEA.

#### 3. Request for Public Comment on Costs and Benefits

The Commission invites public comment on its cost-benefit considerations and dollar cost estimates, including the consideration of reasonable alternatives. Commenters are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

#### X. Request for Comment

The Commission requests comment on all aspects of its Proposed Exemption. In addition, the Commission specifically requests comment on the specific provisions and issues highlighted in the discussion above and on the issues presented in this section. For each comment submitted, please provide a detailed rationale supporting the response.

1. Has the Commission used the appropriate standard in analyzing whether the Proposed Exemption is in the public interest?

2. The Commission recognizes that there may be differences among the Petitioners with respect to size, scope of business, and underlying regulatory framework. Should any provisions of the Proposed Exemption be modified or adjusted, or should any conditions be added, to reflect such differences?

3. Is the scope set forth for the Proposed Exemption sufficient to allow for innovation? Why or why not? If not, how should the scope be modified to allow for innovation without exempting products that may be materially different from those reviewed by the Commission? Should the Commission

exempt such products without considering whether such exemption is in the public interest? Consider this question also with the understanding that any Petitioner (or any entity that is not a current petitioner) may separately petition the Commission for an amendment of any final order granted in this matter.

4. Should the Commission exercise its authority pursuant to section 4(c)(3)(K) of the CEA to extend the Proposed Exemption to agreements contracts or transactions that are entered into by parties other than "appropriate persons" as defined in sections 4(c)(3)(A) through (J) of the CEA, or "eligible contract participants," as defined in section 1a(18)(A) or (B) of the Act and Commission regulation 1.3(m)? If so, please provide a description of the additional parties that should be included.

a. The Commission specifically seeks comment regarding whether (and, if so, why) it is in the public interest to expand the list of such parties to include market participants who "active[ly] participat[e] in the generation, transmission or distribution of electricity" but who are neither "appropriate persons," as defined in section 4(c)(3)(A) through (J) of the CEA, nor "eligible contract participants," as defined in section 1a(18)(A) of the Act and Commission regulation 1.3(m)?

b. If any additional parties should be added, please provide:

(1) An explanation of the financial or other qualifications of such persons or the available regulatory protections that would render such persons "appropriate persons."

(2) The basis for the conclusion that such parties could bear the financial risks of the agreements, contracts, and transactions to be exempted by the Proposed Exemption.

(3) The basis for the conclusion that including such parties would not have any adverse effect on the relevant RTO or ISO.

(4) The basis for the conclusion that failing to include such parties would have an adverse effect on any relevant RTO or ISO.

5. Should the Commission require each Petitioner that is regulated by FERC to have fully implemented the requirements set forth in FERC Order 741 as a condition precedent to the issuance of a final order granting the Proposed Exemption to the particular Petitioner? Why or why not?

6. Should ERCOT be required to comply with the requirements set forth in FERC Order 741 as a prerequisite to the issuance to ERCOT of a final order

granting the Proposed Exemption as to ERCOT? Why or why not?

a. The Commission specifically seeks comment upon whether and why ERCOT would or would not be able to comply with each of the requirements set forth in FERC Order 741. Are any of these requirements inapplicable for an RTO/ISO?

b. Should ERCOT be permitted to adopt alternatives to any of the specific requirements set forth in FERC Order 741 (such as the seven day settlement period in FERC regulation 35.47(b))? What is the basis for the conclusion that the alternative measures would be the equivalents of the FERC requirements in terms of protecting the financial integrity of the transactions that are within the scope of the exemption?

7. Should the Commission require, as a prerequisite to issuing a final order granting the Proposed Exemption to a particular Petitioner, that the Commission be provided with a legal opinion or memoranda of counsel, applicable to the tariffs and operations of that Petitioner, that provides the Commission with assurance that the approach selected by the Petitioner to satisfy the obligations contained in FERC regulation 35.47(d) will provide the Petitioner with rights of setoff, enforceable against any of its market participants under title 11 of the United States Code in the event of the bankruptcy of the market participant? Why or why not? Are there alternative ways to provide the requisite assurance regarding the bankruptcy protections provided by the approach to 35.47(d) compliance selected by Petitioners and the requisite assurance that the central counterparty structure selected by Petitioners will be consistent or contain elements commonly associated with central counterparties?

8. Should the Commission require the execution of an acceptable information sharing arrangement between the Commission and PUCT as a condition precedent to the issuance to ERCOT of a final order granting the request for an exemption?

9. Should the Proposed Exemption be conditioned upon the requirement that the Petitioners cooperate with the Commission in its conduct of special calls/further requests for information with respect to contracts, agreements or transactions that are, or are related to, the contracts, agreements, or transactions that are the subject of the Proposed Exemption?

10. Should Petitioners be required to have the ability to obtain market data and other related information from their participants with respect to contracts, agreements or transactions in markets

for, or related to, the contracts, agreements or transactions that are the subject of the Proposed Exemption? The Commission specifically seeks comment on whether the Petitioners should be capable of re-creating the Day-Ahead Market and Real-Time prices.

11. What is the basis for the conclusion that Petitioners do, or do not, provide to the public sufficient timely information on price, trading volume, and other data with respect to the markets for the contracts, agreements and transactions that are the subject of the Proposed Exemption? What RTO or ISO tariff provisions, if any, require them to do so or preclude them from doing so?

12. What is the basis for the conclusion that the Proposed Exemption will, or will not, have any material adverse effect on the Commission's ability to discharge its regulatory duties under the CEA, or on any contract market's ability to discharge its self-regulatory duties under the CEA?

13. What are the bases for the conclusions that the Petitioners' tariffs, practices, and procedures do, or do not, appropriately address the regulatory goals of each of the DCO Core Principles?

14. What factors support, or detract from, the Commission's preliminary conclusion that FTRs, Energy Transactions, Capacity and Reserve Transactions are not readily susceptible to manipulation for the reasons stated above? Could a market participant use an FTR to manipulate the price of electricity established on the Day-Ahead and Real-Time markets operated by Petitioners? If so, what is the basis for that conclusion? What is the basis for the conclusion that market participants can, or cannot, use Energy Transactions, Capacity or Reserve Transactions to manipulate electricity prices without detection by Independent Market Monitors?

15. What is the basis for the conclusion that Petitioners have, or have not, satisfied applicable market monitoring requirements with respect to FTRs, Energy Transactions, Capacity and Reserve Transactions? What is the basis for the conclusion that the record-keeping functions performed by Petitioners are, or are not, appropriate to address any concerns raised by the market monitoring process? What is the basis for the conclusion that the market monitoring functions performed by Petitioners and their MMUs do, or do not, provide adequate safeguards to prevent the manipulation of Petitioners' markets?

16. What is the basis for the conclusion that Petitioners, or their

participants, should, or should not, be required to satisfy position limit requirements with respect to any of the contracts, agreements or transactions that are the subject of the Proposed Exemption? Specifically, what is the basis for the conclusion that it is, or is not, possible for Petitioners, or their participants, to violate position limits with FTRs or Virtual Bids? What is the basis for the conclusion that the nature of FTRs or Virtual Bids do, or do not, inherently limit the ability of market participants to engage in manipulative conduct?

17. What are the bases for the conclusions that Petitioners do, or do not, adequately satisfy the SEF requirements for (a) recordkeeping and reporting, (b) preventing restraints on trade or imposing any material anticompetitive burden, (c) minimizing conflicts of interest, (d) providing adequate financial resources, (e) establishing system safeguards and (f) designating a CCO? Specifically, do the procedures and principles in place allow the Petitioners to meet the requirements of SEF core principles 10–15?

18. What is the basis for the conclusion that the Petitioners' eligibility requirements for participants are, or are not, appropriate to ensure that market participants can adequately bear the risks associated with the Participants markets?

19. What is the basis for the conclusion that Petitioners do, or do not, have adequate rules in place to allow them to deal with emergency situations as they arise? What deficiencies, if any, are there with respect to their emergency procedures that would prevent any Petitioner from taking necessary action to address sudden market problems?

20. The Commission invites comment on its consideration of the costs and benefits of the Proposed Exemption, including the costs of any information requirements imposed therein. The Commission also seeks comment on the costs and benefits of this Proposed Exemption, including, but not limited to, those costs and benefits specified within this proposal. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

Issued in Washington, DC on August 21, 2012, by the Commission.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

**Notice of Proposed Order and Request for Comment on a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in Section 4(c)(6) of the Act—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 proposed relief from the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) swaps provisions for certain electricity-related transactions entered into on markets administered by regional transmission organizations (RTOs) or independent system operators (ISOs). The relief responds to a petition filed by a group of RTOs and ISOs.

Congress directed the CFTC, when it is in the public interest, to provide relief from the Dodd-Frank Act's swaps market reform provisions for certain transactions on markets administered by RTOs and ISOs.

These entities were established for the purpose of providing affordable, reliable electricity to consumers within their geographic region. They are subject to extensive regulatory oversight by the Federal Energy Regulatory Commission (FERC), or in one instance, by the Public Utility Commission of Texas (PUCT). In addition, these markets administered by RTOs and ISOs are central to FERC and PUCT's regulatory missions to oversee wholesale sales and transmission of electricity.

The scope of the proposed relief extends to the petitioners for four categories of transactions—financial transmission rights, energy transactions, forward capacity transactions, and reserve or regulation transactions. Each of these transactions are inextricably linked to the physical delivery of electricity.

I look forward to receiving public comment on the proposed relief.

[FR Doc. 2012–20965 Filed 8–27–12; 8:45 am]

**BILLING CODE P**



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Part III

Department of Homeland Security

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Coast Guard

33 CFR Parts 83, 84, 85, *et al.*

Changes to the Inland Navigation Rules; Proposed Rule

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 83, 84, 85, 86, 87, and 88

[Docket No. USCG–2012–0102]

RIN 1625–AB88

#### Changes to the Inland Navigation Rules

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the inland navigation rules and their annexes in 33 CFR parts 83 through 88 to align the regulations with amendments made by the International Maritime Organization to the Convention on the International Regulations for Preventing Collisions at Sea, to which the United States is a signatory, and to incorporate recommendations made by the Navigation Safety Advisory Council. These changes would harmonize domestic and international law by reducing and alleviating equipment requirements on vessels, addressing technological advancements, such as wing-in-ground craft, and increasing public awareness of the inland navigation rules. The changes would also make references to applicable requirements easier to locate by using the same format in domestic regulations as is used in the international convention.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before October 29, 2012 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG–2012–0102 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 LCDR Megan L Cull, Coast Guard; telephone 202–372–1565, email [megan.l.cull@uscg.mil](mailto:megan.l.cull@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:**

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##### **I. 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.

##### *A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0102), 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 or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone 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>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Proposed Rule” and insert “USCG–2012–0102” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. 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 this proposed rule based on your comments.

##### *B. 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>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG–2012–0102” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### *C. 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).

#### D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, 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**.

## II. Abbreviations

AIS Automated Identification System  
 CFR Code of Federal Regulations  
 COLREGS Convention on the International Regulations for Preventing Collisions at Sea  
 DHS Department of Homeland Security  
 DSC Digital Selective Calling  
 IMO International Maritime Organization  
 NAVSAC Navigation Safety Advisory Council  
 NBSAC National Boating Safety Advisory Council  
 NPRM Notice of Proposed Rulemaking  
 § Section symbol  
 SOLAS International Convention for Safety of Life at Sea  
 U.S.C. United States Code  
 WIG craft Wing-in-Ground craft

## III. Basis and Purpose

The purpose of this rulemaking is to harmonize existing domestic law with current international law because Coast Guard regulations relating to inland navigation rules are inconsistent with the international standards found in the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS), to which the United States is a signatory. In addition to the alignment with international standards, the Navigation Safety Advisory Council (NAVSAC) recommended several changes to the regulations that would simplify the inland navigation rules and change equipment requirements for certain vessels. The Coast Guard has initiated this rulemaking under the authority of the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293) and the Department of Homeland Security Delegation 0170.1, Delegation to the Commandant of the Coast Guard.

## IV. Background

In 1972, the International Maritime Organization (IMO) formalized the COLREGS, or international rules. The United States ratified this treaty and adopted the COLREGS in the

International Navigation Rules Act of 1977. Ratification of this treaty made all U.S. vessels subject to the COLREGS while operating on international waters. The corresponding rules for inland waters, or inland navigation rules, did not go into effect until Congress enacted the Inland Navigational Rules Act of 1980. The inland navigation rules and the COLREGS are very similar in both content and format.

The IMO has made several amendments to the COLREGS since they were promulgated in 1972. The United States has adopted these amendments through statute until the two most recent IMO amendments in 2001 and 2007. Incorporation of these IMO amendments is one of the purposes of this Notice of Proposed Rulemaking (NPRM).

In 2004, Congress passed the Coast Guard and Maritime Transportation Act of 2004, which, in effect, gave the Secretary of Homeland Security (“the Secretary”) the authority to issue inland navigation regulations. The Secretary further delegated the authority to develop and enforce navigation safety regulations to the Commandant of the Coast Guard through Department of Homeland Security Delegation 0170.1, “Delegation to the Commandant of the Coast Guard.”

Through the most recent regulatory change in 2010, the Coast Guard used the authority granted by Congress and delegated by the Secretary to move the inland navigation rules from the United States Code (U.S.C.) to 33 CFR part 83.75 FR 19544. Regulations in 33 CFR part 83, along with regulations in 33 CFR parts 84 through 88, now comprise the complete domestic inland navigation rules. Movement to the CFR in 2010 effectively ended statutory codification of the inland rules of the road.

Using this authority, the Coast Guard proposes to amend 33 CFR part 83, along with 33 CFR parts 84 through 88, to align U.S. inland navigation rules with the COLREGS as much as practicable and to incorporate other NAVSAC recommendations and Coast Guard changes.

## V. Discussion of Proposed Rule

This NPRM proposes many changes to the regulations in 33 CFR parts 83, 84, 85, 86, 87, and 88 that would preempt State and local law regarding inland navigation, make current regulations more consistent with international standards, and make other NAVSAC recommended changes, including mandating the use of other electronic equipment, such as AIS, if outfitted, and allowing certain small vessels to use an all-round white light in addition to the

currently approved electric torch or lighted lantern. Many of these changes would reduce the regulatory burden on mariners. The proposed changes are described below.

### A. Preemption of State and Local Law Language Added to the Application Section at 33 CFR 83.01(a)

On May 20, 2009, President Obama issued a memorandum entitled “Preemption” to the heads of executive agencies. The purpose of this memorandum was to ensure that “preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.” The memorandum also required agencies to include preemption provisions in the codified regulations when regulatory preambles discussed its intention to preempt State law through the regulation. Furthermore, it directed that these preemption provisions must be justified under the legal principles governing preemption, including those outlined in EO 13132 (this memorandum is available for viewing in the rulemaking docket by following the instructions under the “Public Participation and Request for Comments” section of this preamble).

In 33 U.S.C. 2071, Congress specifically granted to the Secretary the authority to “issue inland navigation regulations applicable to all vessels upon the inland waters of the United States and technical annexes that are as consistent as possible with the respective annexes to the International Regulations.” Because this authority is expressly granted by Congress to the Secretary, State and local laws are preempted by Federal law. Therefore, based on the President’s 2009 memo and the preemption principles outlined in EO 13132, the Coast Guard proposes to add the following sentence to 33 CFR 83.01(a): “The regulations in this subchapter have preemptive effect over State or local regulation within the same field.”

### B. All Provisions of 33 CFR Part 85, Annex II, and 33 CFR Part 88, Annex V, Would Be Moved Into the Main Body of 33 CFR Part 83

Prior to 2010, the inland navigation rules were located in statute. The Coast Guard promulgated five annexes through regulation, to be read in conjunction with the inland navigation statute. These annexes correspond to COLREGS annexes. Because the inland navigation rules have become regulation, NAVSAC recommended that sections of Annex V be relocated to the

main regulation text. Additionally, the Coast Guard proposes to relocate the provisions of Annex II to the main regulation text.

We propose to move these provisions without substantive change to the appropriate sections in part 83. Reorganizing the Annex II and Annex V provisions to be found in part 83 would

ease compliance and simplify the study of the rules. As a result of moving the provisions of these annexes to part 83, paragraph (d) in section 83.26 must be removed and reserved. This paragraph speaks to the provisions of Annex II that have now been moved to part 83. Additionally, for clarity, the appropriate

paragraphs of Rule 26 must be added to new paragraph (f) of section 83.26 in lieu of the more general “these Rules” currently found in the regulation.

Table 1 summarizes the movement of 33 CFR part 85, Annex II, and 33 CFR part 88, Annex V, provisions to 33 CFR part 83.

TABLE 1

Current section number and heading	Proposed section number and paragraph
85.1 General .....	83.26(f)
85.3 Signal for trawlers.....	
85.5 Signal for purse seiners.....	
88.05 Copy of rules .....	83.01(g).
88.09 Temporary exemption from light and shape requirements when operating under bridges .....	83.20(f).
88.11 Law enforcement vessels .....	83.27(i).
88.12 Public safety activities .....	83.27(j).
88.13 Lights on moored barges .....	83.24(k) through (p).
88.15 Lights on dredge pipelines .....	83.24(g).

There would no longer be any provisions in part 85, Annex II, or part 88, Annex V, except for provisions reserving these parts for any future amendments that may require their use. To this end, the general purpose and applicability provisions of parts 85 and 88 would be reserved. This would be done by removing all regulations from this part and reserving the first sections only as a placeholder. Therefore, 33 CFR 85.1 would be redesignated as § 85.01, and § 85.01 would then be reserved, along with § 88.01.

*C. COLREGS Amendment Language and Terms Would Be Aligned With International Rules at 33 CFR Part 83*

In 2001 and 2007, the IMO adopted several amendments to the COLREGS through Resolution A.910(22) and Resolution A.1004(25), respectively. NAVSAC recommended that, in the interests of uniformity and simplification for mariners, and to continue encouraging compliance with the COLREGS, the Coast Guard should adopt these amendments in regulation. The amendments that NAVSAC recommended and the Coast Guard proposes are as follows:

1. The IMO incorporated the term “Wing-In-Ground (WIG) craft” into several sections of the COLREGS and added requirements applicable to this type of craft. The following sections in part 83 would be amended to add this term and/or its definition or add requirements applicable to WIG craft: §§ 83.03(a), 83.03(m), 83.18(f), 83.23(c), and 83.31. These additions specify how WIG craft should operate around other vessels, including when taking off, landing, and when in flight, as well as

lighting requirements specific to WIG craft. Current WIG craft operations are limited to prototype testing, feasibility studies, and other limited activities. However, the specific construction, design, and operation of WIG craft pose unique risks that we are trying to address while also conforming to the IMO standard.

2. The IMO modified COLREGS sound signal equipment requirements for vessels based on size. One amendment removes the requirement for a bell on a vessel of 12 meters or more in length but less than 20 meters in length. The other amendment reduces the regulatory restrictions placed on the characteristics of whistles allowed for vessels of specific lengths. The Coast Guard would add the same language to §§ 83.33(a) and 83.35(i). We would also amend the existing language in part 86, subpart A. This language consists of amendments that IMO believes cater to smaller vessels since these amendments provide regulatory flexibility for sound signal requirements. We concur—by following IMO’s example, we also would be decreasing the regulatory burden for small vessels by allowing sound options without negatively impacting navigation safety.

3. The IMO amended existing sections of COLREGS to incorporate new formulas and new standards. Sections 84.13(a), 84.13(b), 86.01(a), 86.01(c), 86.02(b) and the Table in 86.01 would be partially amended to align with the new COLREGS language. Sections 84.13(a) and 84.13(b) would be amended to account for the vertical separation of masthead lights on high-speed craft. These amendments incorporate new formulas to

accommodate novel designs in the trim and resulting masthead placement of these specific types of crafts. By changing these formulas, the masthead light would be more visible, thereby increasing the safety of these vessels. In section 86.01 and 86.02, we would amend the frequency and range of audibility standards to relax the requirements for sound pressure levels and octave bands. We believe that the safety of vessels is not measurably impacted by the differing standards and that aligning domestic regulations with the international standard eases compliance.

4. The IMO amended COLREGS Rule 8, paragraph (a), which corresponds to § 83.08(a), and which generally governs actions taken to avoid collision, by adding the requirement that such actions “be taken in accordance with the Rules of this part.” The IMO added this language to make clear that any action to avoid collision should be taken in accordance with the relevant rules in the COLREGS, and to link Rule 8 with the other navigation rules. We propose to amend § 83.08(a) to include this revised language.

5. The IMO modified COLREGS distress signal requirements to update technologies in its list of acceptable equipment. Section 84.01(d), (l), and (m) would be amended to eliminate radiotelegraph or radiotelephones alarms as approved distress calls, with the exception of SOS, which may be transmitted via any means. Radiotelephones can still be used, but not the radiotelephone alarm function. There are no costs associated with removing the alarms as approved distress calls because this change does

not require the replacement of such equipment. Radiotelegraphs are obsolete and are no longer used by the industry.<sup>1</sup> This change was made to the International Convention for Safety of Life at Sea (SOLAS) Chapter V in 1999. It was also instituted domestically by the Federal Communications Commission in the 1990s and has been in effect since then. This change also expands the list of approved equipment for emergency calls to include Digital Selective Calling (DSC), Inmarsat, and other mobile satellite service provider ship earth stations but does not require carriage of such equipment.

The search and rescue manual reference in paragraph 3 has also been updated. There is no cost to the change in reference because there is no requirement to purchase the manual.

6. Rule 24 of the COLREGS provides lighting and shape requirements for partially submerged vessels or objects being towed, or a combination thereof. In review of our regulations, the lighting and shape requirements for towed combinations were omitted. We propose to add this language to match the COLREGS.

There would be no additional requirements on mariners imposed by the additions and amendments in 1 through 6 above. Instead, these sections would conform to the international standards and provide more options for vessel equipment compliance and increase the clarity of these requirements.

#### *D. NAVSAC Recommended Change*

NAVSAC recommended a change to the existing inland navigation rules in which § 83.07(b) would be amended to add the words “and other electronic” following the word “radar.” The Coast Guard agrees. In 2003, we published a final rule mandating the use of Automatic Identification Systems (AIS) on a large number of seagoing vessels. The use of AIS is also a SOLAS requirement. Therefore, adding the words “and other electronic” equipment to this section would be consistent with the AIS final rule by requiring vessels that are otherwise required to have an AIS to use the system for collision avoidance in accordance with inland navigation rules. No additional equipment is required by vessels as a result of this change. Those vessels required by 33 CFR 164.46, or those electing to carry, an AIS are instructed to utilize this tool for collision avoidance purposes. This description would also allow for future

development and use of technology that would meet Coast Guard requirements.

#### *E. “Exhibit an All-round White Light” Would Be Added to 33 CFR 83.25*

The National Boating Safety Advisory Committee (NBSAC) proposed several options to the Coast Guard to reduce the risk of vessel collisions. One of the options that NBSAC proposed was to enhance the visibility of smaller vessels and sailing vessels. NAVSAC agreed with the NBSAC proposal and recommended that the Coast Guard add the option of using an all-round white light as a means for vessels of less than 7 meters or vessels under oars to advertise their position and help prevent collisions. Therefore, in § 83.25(d)(1) and (2), we propose to add the following phrase as an option for lighting: “exhibit an all-round white light or.”

#### *F. Proposed Removal of the Contradictory Paragraph (c) in 33 CFR 83.26*

In current 33 CFR 83.26, which concerns lights on vessels engaged in fishing other than trawling, there are two contradictory paragraphs, both of which are labeled as paragraph (c). The second paragraph (c) is the correct version and would remain in this section. We propose to remove the contradictory paragraph (c), currently appearing first in the regulations, to avoid confusion or inability to choose the correct lighting and shapes.

#### *G. Clarifying Language Added To 33 CFR 83.01 To Enumerate Appropriate Authorities*

In Rule 1, section 83.01, paragraph (b)(i), we propose to add the following after Regulations: “for Preventing Collisions at Sea, 1972, including annexes currently in force for the United States (“International Regulations”).” This language would clarify what international regulations we are referring to throughout the regulation.

#### *H. Non-Substantive Changes to Numbering or Citing To Reflect Additions, Amendments, and/or To Conform to COLREGS Cites*

Based on the movement of some provisions, addition of new terms, and for ease of reference in locating applicable rules, several proposed changes would involve re-numbering or correcting cites in 33 CFR parts 83 through 88.

Sections 83.03(n) through 83.03(r) and 83.23(d) through 83.23(e) would be re-lettered following the insertion of the WIG craft language. Section 83.35(j) and

83.35(k) would be re-lettered following the insertion of additional vessel applicability language.

Section 83.24(c) would be amended to reference the correct cite to (i) instead of (1). Paragraph (b) in § 83.08 would be amended to add “and/” after “course” in both instances so as to correspond to COLREGS language.

To correspond to COLREGS numbering, § 83.18(d) would be reserved, thereby requiring the current paragraph (d) to be re-lettered as (e). Sections 83.03(h), 83.26(g)(ii)(2), and 83.35(d) are also reserved to correspond to COLREGS which also necessitate changes in paragraph lettering.

Parts 84 through 88, collectively the annexes, would be re-numbered in their entirety to correspond to the COLREGS numbering system because all inland navigation rules have been moved into the CFR. Two of the annexes, parts 85 and 88, would be reserved for use at a later date because the provisions of these annexes would be moved to part 83. Citations to the applicable annexes would be added to the following for easy reference: §§ 83.22, 83.27, 83.32, 83.33, 83.34, 83.37, and 83.38.

In addition to the other non-substantive changes, numbers would be replaced with roman numerals, lists would begin with lowercase letters, headings would be removed, and terms in the definition sections would be italicized instead of using quotations to model the domestic format after the international format. The format changes are necessary to reduce confusion for the maritime community by making the domestic and international rules uniform. Additionally, the non-substantive changes would make for easy reference of the domestic and international rules because the numbering scheme would be identical to the extent practicable.

## **VI. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below, we summarize our analyses based on 14 of these statutes or executive orders.

### *A. Regulatory Planning and Review*

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and

<sup>1</sup> <http://www.gpo.gov/fdsys/pkg/FR-1995-01-27/pdf/95-2092.pdf>.

equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting regulatory flexibility and further requires agencies to adapt rules that are outdated or outmoded. This rule does that, removing contradictory language, expanding options for compliance, allowing for new technologies and removing outdated equipment from our regulations. This NPRM has not been designated a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. A draft regulatory assessment follows:

As stated in section V. *Discussion of Proposed Rule* of this preamble, this NPRM would update existing regulations to those of COLREGS, incorporate provisions suggested by NAVSAC, and add language regarding federalism, based on President Obama’s 2009 memo and EO 13132. The proposed regulations fall under two categories: Harmonizing and discretionary. Harmonizing changes include provisions associated with the Presidential memo and COLREGS. Discretionary provisions are those recommended by NAVSAC.

**Alternatives Considered**

Alternative 1—No Action. We rejected this alternative, as this alternative

would ensure that the current differences between the domestic and international navigation rules continue, creating potential navigational errors and potential for mishaps, and would not be consistent with the Coast Guard’s commitment to conform the inland navigation rules with the COLREGs as much as practicable. The proposed alternative incorporates regulations that are less stringent than the current regulations while maintaining the benefits of the current regulations.

Alternative 2—Incorporation of burden increasing NAVSAC recommendations. Alternative 2 would include all the changes in the proposed alternative and two additional changes recommended by NAVSAC. Those additional changes, which would increase the burden on the regulated community and expand the affected population, are as follows:

1. Lighting of gas pipelines (33 CFR 88.15). A 1991 NAVSAC resolution proposed lighting gas pipelines in a manner similar to that done with dredge pipelines as described in 33 CFR 88.15. However, the Department of Transportation’s Pipeline and Hazardous Material Safety Administration has since published regulations affecting some of the gas pipelines that necessitated the original NAVSAC resolution. Additional study is now needed to determine if current regulations have effectively decreased

the number of incidents and whether further Coast Guard regulatory action is required.

2. The requirement that vessels greater than 16 feet must carry the inland navigation rules booklet. This provision would expand the population of vessels that must carry a copy of the inland navigation rules from vessels 12 meters (approximately 39.37 feet) or more in length to vessels more than 16 feet long. The Coast Guard rejects this recommendation due to a lack of quantifiable benefits to justify a high regulatory burden on recreational vessels at this time.

**Summary of the Proposed Rule**

Vessels affected by this proposed rule would be vessels traveling on inland waters of the United States. At this time, we anticipate a small additional cost for future WIG craft to install a light. We estimate that there would not be additional costs or burden from the other harmonizing or discretionary provisions. A benefit of the harmonizing provisions is complying with COLREGS and the Presidential memo. Both harmonizing and discretionary provisions would also provide regulatory flexibility to certain vessels. Some of the discretionary changes may help to reduce risk of collision. A summary of the Regulatory Analysis is provided in Table 2.

**TABLE 2—SUMMARY OF THE REGULATORY ANALYSIS**

Category	Summary (harmonization)	Summary (discretionary)
Affected population .....	All vessels traveling on inland waters ..... Certain subgroups of vessels (refer to Table 3 for details).	All vessels traveling on inland waters. Certain subgroups of vessels (refer to Table 3 for details).
Costs .....	Costs: ..... \$112 annual. \$1,119 10-year total.	Costs: \$0.
Cost savings* (undiscounted) .....	Cost savings: \$271,642 annual. \$2.72 million 10-year total.	
Unquantified benefits .....	Compliance with the COLREGS and Presidential memo. Increased regulatory flexibility of regulations to certain vessels.	Incorporation of NAVSAC and NBSAC recommendations. Increased regulatory flexibility of regulations to certain vessels. Reduction of risk of collision for certain vessels.

\* Cost savings are uncertain. Our estimate illustrates the maximum cost savings that industry would receive.

**Affected Population**

This proposed rule would affect vessels on inland waters of the United

States. Some of the provisions in this proposed rule would affect specific subgroups of these vessels. Population

groups and subgroups affected by this proposed rule are listed in Table 3.

**TABLE 3—BREAKDOWN OF AFFECTED POPULATIONS BY PROVISION TYPE**

Affected by harmonization provisions	Affected by discretionary provisions
Vessels on inland waters .....	Vessels on inland waters.
Subgroups .....	Subgroups

TABLE 3—BREAKDOWN OF AFFECTED POPULATIONS BY PROVISION TYPE—Continued

Affected by harmonization provisions	Affected by discretionary provisions
<ul style="list-style-type: none"> <li>• WIG craft.<sup>2</sup> .....</li> <li>• Vessels of 12 meters or more, but less than 20 meters in length .....</li> <li>• New high-speed vessels of 50 meters or more in length .....</li> <li>• Vessels less than 75 meters. ....</li> <li>• Vessels 20 meters or more in length .....</li> <li>• Vessels equipped with radiotelephone alarms or radiotelegraph alarms ..</li> <li>• Partially sunken vessels and objects being towed in combination .....</li> </ul>	<ul style="list-style-type: none"> <li>• Sailing vessels of less than 7 meters in length</li> <li>• Vessels under oars</li> <li>• Fishing vessels (non-trawling).</li> </ul>

Summary of the Impacts of the Proposed Rule on Affected Populations

This proposed rule would modify various sections of 33 CFR parts 83

through 88 to align domestic regulations with COLREGS, as much as practicable, and to incorporate NAVSAC recommendations. In Table 4, we

provide a summary of the impacts, grouped by provision type and then affected population. Please refer to the regulatory text for specific changes.

TABLE 4—SUMMARY OF IMPACTS OF THE PROPOSED RULE ON THE AFFECTED POPULATIONS

Section(s) and descriptions	Population	Costs and benefits
Harmonizing Provisions		
Presidential Memo		
§ 83.01(a) .....	States that vessels must comply with this proposed rule and that this proposed rule preempts state and local laws.	All vessels .....
		Cost: \$0 Vessels already comply with the federal regulations. There are no state laws that conflict with the federal regulations. Benefit: Clarifies federalism and adheres to the Presidential memo.
Alignment with COLREGS		
§ 83.03(a), § 83.03(m), § 83.18(f), § 83.23(c), § 83.31.	Provides operational and lighting requirements for WIG craft when operating on water.	WIG craft .....
§ 83.08(a) .....	Adds the phrase to read as, “[Any action taken to avoid collision] shall be taken in accordance with the Rules of this part and shall”.	All vessels .....
§ 83.33(a), Part 86, subpart B .....	Removes the need for a bell .....	New vessels 12 meters or more in length, but less than 20 meters in length.
§ 83.35(i) .....	If the vessel is equipped with a bell and the bell is used, the sound must be made at 2-minute intervals.	New vessels 12 meters or more in length, but less than 20 meters in length.
		Cost: \$1,119 To install an all-round red light. Benefit: Conforms with COLREGS. Cost: \$0 All vessels must comply with existing regulations. There are no additional costs to the modified regulations in this part. Benefit: Conforms with COLREGS. Cost Savings: \$299 per vessel, \$2.72 million over 10 years. Benefits: More lenient requirement. Conforms with COLREGS. Cost: \$0 Applies to the use of existing bells. The use of bells is optional. Benefits: Reduces risk of collision if proper sound signal is used during reduced visibility. Conforms with COLREGS.

<sup>2</sup> Wing-in-Ground craft are low-flying vehicles that use air pressure between the wing of the craft and the Earth’s surface to create lift. While it is capable of flight, given the low altitude in which

a WIG craft flies, it was incorporated by IMO (and consequently, US regulations) as a vessel. For more information regarding WIG craft, please refer to the IMO Web site: <http://www.imo.org/ourwork/safety/>

[regulations/pages/wig.aspx](http://www.se-technology.com/wig/index.php) and this Web site dedicated to the discussion of WIG craft: <http://www.se-technology.com/wig/index.php>.

TABLE 4—SUMMARY OF IMPACTS OF THE PROPOSED RULE ON THE AFFECTED POPULATIONS—Continued

<p>§ 84.13, § 84.24 .....</p>	<p>Allows an optional modification to the masthead lighting.. Moves section to 33 CFR 84.13 ..</p>	<p>New high-speed vessels of 50 meters or more in length.</p>	<p>Cost: \$0 Does not require additional lights or modifications to existing lights. Benefits: Makes lighting requirements more lenient. Accommodates new vessels with novel designs. Conforms with COLREGS.</p>
<p>Part 86, subpart A .....</p>	<p>Expands the acceptable range for fundamental frequencies. Vessels have the option of purchasing a greater range of whistles with different ranges than previously allowed. Reduces the required frequencies for vessels of 20 meters or greater.</p>	<p>Vessels of less than 75 meters in length.  Vessels of 20 meters or more in length.</p>	<p>Cost: \$0 Does not require vessels to buy a new whistle. Benefits: less stringent standards allows for greater options of whistles for new vessels. Conforms with COLREGS.</p>
<p>33 CFR Part 87 .....</p>	<p>Radiotelegraph and radiotelephone alarms would no longer be accepted as approved distress calls.  Adds Digital Selective Calling, INMARSAT, and other mobile satellite service provider ship to Earth stations.</p>	<p>Vessels equipped with radiotelephone alarms or radiotelegraph alarms.</p>	<p>Cost: \$0 Radiotelegraphs are obsolete.<sup>3</sup> Radiotelephones can be used, but not their alarms. Does not require equipment replacement. Benefit: Updates the list of approved distress signal equipment to incorporate the latest technologies. Conforms with COLREGS.</p>
<p>Part 83.24(g) .....</p>	<p>Partially sunken vessels and objects being towed in combination.</p>	<p>Partially submerged vessels and other objects being towed, in combination, would comply with lighting and shape requirements.</p>	<p>Cost: \$0 Lighting and shape requirements for partially submerged vessels or other objects are already outlined. This rule uses same requirements if towing more than one at a time. Benefits: Conforms with COLREGS.</p>
<p>§ 83.03(m)–(q), § 83.08(a), § 83.09, § 83.18(d), § 83.18(e), § 83.20(e), § 83.23(c)–(d), § 83.24(c)(1), § 83.35(i)–(j). Part 84—ANNEX I, § 85—ANNEX II, Part 86—ANNEX III, Part 87—ANNEX IV, Part 88—ANNEX V, § 88.03, § 88.05, § 88.09, § 88.11, § 88.12, § 88.13, § 88.15.</p>	<p>Renumbers or moves regulations without substantive changes in order to align text with that of COLREGS.</p>		<p>Cost: \$0 Changes include removal of headings, moving sections to other locations, or renumbering. Provides no additional requirements to industry. Benefits: Adherence to COLREGS formatting. Simplifies use between COLREGS and the CFR.</p>
<p>Discretionary Provisions</p>			
<p>§ 83.07(b) .....</p>	<p>Vessels with navigation technology must use it for collision avoidance purposes.</p>	<p>All vessels .....</p>	<p>Cost: \$0 Current industry practices already use these types of navigational equipment. Benefit: Expands option of auxiliary navigational equipment. If equipment is installed and used, it can reduce risk of collision. Incorporates NAVSAC recommendations.</p>
<p>§ 83.25(d) .....</p>	<p>Allows the optional use of an all-round white light.</p>	<p>Sailing vessels of less than 7 meters in length.  Vessels under oars .....</p>	<p>Cost: \$0 Vessels can use additional lighting in the form of an all-round white light. Does not require the purchase of additional equipment. Benefits: Allows for more lighting options for better visibility. Incorporates NAVSAC and NBSAC recommendations.</p>
<p>§ 83.26(c) .....</p>	<p>Removes contradictory requirement. Provides clear standard.</p>	<p>Fishing vessel (non-trawling) .....</p>	<p>Cost: \$0 Removes contradictory statement. Benefit: Provides a clear standard.</p>

Costs

As stated in section III. Basis and Purpose of this preamble, the primary purpose of this proposed rule is to harmonize existing domestic law with the current international law.

Most of the provisions harmonize the CFR with COLREGs by moving sections to different locations, renumbering, or reformatting.<sup>4</sup> There are six changes to COLREGS that affect specific vessels. The first change incorporates WIG craft into the population of affected vessels. The second change removes the need for a bell, particularly for new vessels of 12 meters or greater, but less than 20 meters. The third COLREGS provisions modify sound requirements for certain vessels. The fourth change modifies the formula for lighting requirements for high-speed vessels. The fifth significant COLREGS provision removes radiotelegraphs and radiotelephones as approved equipment for distress calls.

The sixth and final change adds language about the combination of partially submerged vessels.

A more detailed description of these changes is outlined in the following paragraphs. One other harmonizing change adds a preemption provision explaining that the codified regulation preempts state or local law within the same field. This provision complies with the Presidential memorandum and EO 13132, which requires executive agencies to ensure that its preemption statements have a sufficient legal basis and to make explicit in the codified regulation its intention to preempt State law, but does not change the compliance standards for vessels.

1. *Wing-in-Ground (WIG) Craft*. As stated in the preamble of this NPRM, there are ongoing prototype and feasibility testing in the United States for WIG crafts. While we do not have any information as to the success rate of

these tests, we assume that even prototype versions may be tested on inland waters or that some of them would successfully pass testing.

Given the existence of prototype testing and the possibility of one being successful, we estimate that there may be one new vessel operating on inland waters in any given year.<sup>5</sup> Assuming that there may be one WIG craft in any given year, the incremental cost is to install an all-round, high-intensity red light.

We then calculated cost to install the required light for WIG craft masthead light based on the growth rate (one vessel annually), multiplied by the cost of the light (one light required per vessel), and determined that this section of the proposed rule would provide a total undiscounted cost of \$1,119.<sup>6</sup> Table 5 describes the costs in terms of per vessel, annual savings, and total undiscounted cost.

TABLE 5—PER VESSEL, AVERAGE, RECURRING, TOTAL 10-YEAR UNDISCOUNTED/DISCOUNTED COSTS

Future vessel population (annual)	Per vessel cost	Total 10-year undiscounted cost	7% Discounted 10-year cost	3% Discounted 10-year cost
1 .....	\$112	\$1,119	\$786	\$954

Note: numbers may not add due to rounding.

Table 8 provides the breakdown of cost, both undiscounted and discounted (at 3 and 7 percent rates), over the 10-year period of analysis.

TABLE 6—TOTAL 10-YEAR UNDISCOUNTED AND DISCOUNTED COSTS

Year	Undiscounted	7% Discounted costs	3% Discounted costs
Year 1 .....	\$112	\$105	\$109
Year 2 .....	112	98	105
Year 3 .....	112	91	102
Year 4 .....	112	85	99
Year 5 .....	112	80	97
Year 6 .....	112	75	94
Year 7 .....	112	70	91
Year 8 .....	112	65	88
Year 9 .....	112	61	86
Year 10 .....	112	57	83
Total .....	1,119	786	954
Annualized .....	112	112	112

<sup>3</sup> By 1995, the Coast Guard considered telegraph to be obsolete. <http://www.gpo/fdsys/pkg/FR-1995-01-27/pdf/95-2092.pdf>

<sup>4</sup> International Maritime Organization. *Convention On the International Regulations For Preventing Collisions at Sea, 2003 (Consolidated Edition 2003)*. [www.imo.org](http://www.imo.org).

<sup>5</sup> There has been some experimentation in developing WIG craft in some other countries,

which would explain the additional language to incorporate WIG craft into regulation. Currently, there are only 3 currently in existence internationally. News regarding the Singaporean-flagged WIG craft: [http://www.wigetworks.com/pdf/Press\\_Release-MV\\_Airfish\\_8\\_Christening\\_Ceremony.pdf](http://www.wigetworks.com/pdf/Press_Release-MV_Airfish_8_Christening_Ceremony.pdf). News regarding the two Korean WIG craft: <http://articles.maritimepropulsion.com/article/Wing-in-Gound-Effect-Craft-e28093-Furure-is-Here-Say-Korean-Shipbuilders41727.aspx>.

<sup>6</sup> The average cost for an all-round red light is: \$112. The low cost is: \$70 [http://www.go2marine.com/item/16246/series-40-all-round-navigation-lights-40004.html?WT.mc\\_id=gb1&utm\\_source=googlebase&utm\\_medium=productfeed&utm\\_campaign=googleshopping](http://www.go2marine.com/item/16246/series-40-all-round-navigation-lights-40004.html?WT.mc_id=gb1&utm_source=googlebase&utm_medium=productfeed&utm_campaign=googleshopping). The high cost is \$153 <http://shop.sailboatowners.com/prod.php?5910/Series+32+All-Round+LED+Lights>.

2. *New vessels of 12 meters or more, but less than 20 meters, in length.* One of the provisions in this NPRM removes the need for bells on vessels of 12 meters or more, but less than 20 meters, in length. This means that existing vessels of such length have the option of removing their bells, but are not required to do so. There is no cost to existing vessels since the provision does not require additional equipment or changes, nor does it require the removal of existing equipment. We estimate potential cost savings for new vessels using the assumption that owners

would choose to follow this new provision and not install a bell. In other words, our estimate illustrates the maximum cost savings that industry would receive.

In order to estimate the cost savings from not installing bells, we took a high range cost and a low range cost to calculate the average retail price of a bell (\$299) to represent potential costs incurred by the owner should the owner choose to purchase and install a bell.<sup>7,8</sup> We then estimated the future growth rate based on the build years of vessels listed in the Marine Information for

Safety and Law Enforcement database from the years 2008 to 2011. During this time, 3,628 vessels were built in the 12–20 meter size range at an average rate of 907 annually (or 0.01 percent of the total population). We then calculated cost savings to industry based on the growth rate, multiplied by the cost of a bell, and determined that this section of the proposed rule would provide a 10-year total undiscounted cost savings of \$2.72 million. Table 7 describes the savings in terms of per vessel, annual savings, and total undiscounted savings.

TABLE 7—PER VESSEL (GREATER THAN OR EQUAL TO 12 METERS, BUT LESS THAN 20 METERS IN LENGTH), RECURRING, AND TOTAL 10-YEAR UNDISCOUNTED COSTS

Future vessel population (annual)	Per vessel cost savings	Annual cost savings	Total 10-year undiscounted cost savings
907 .....	\$299	\$271,642	\$2,716,420

Note: numbers may not add due to rounding.

Table 8 provides the breakdown of cost savings, both undiscounted and

discounted (at 3 and 7 percent rates), over the 10-year period of analysis.

TABLE 8—10-YEAR UNDISCOUNTED AND DISCOUNTED RATES

Year	Undiscounted	7% Discount rates	3% Discount rates
Year 1 .....	\$271,642	\$253,871	\$263,730
Year 2 .....	271,642	237,263	256,049
Year 3 .....	271,642	221,741	248,591
Year 4 .....	271,642	207,234	241,350
Year 5 .....	271,642	193,677	234,321
Year 6 .....	271,642	181,007	227,496
Year 7 .....	271,642	169,165	220,870
Year 8 .....	271,642	158,098	214,437
Year 9 .....	271,642	147,755	208,191
Year 10 .....	271,642	138,089	202,127
Total .....	\$2,716,420	\$1,907,899	\$2,317,161
Annualized .....	\$271,642	\$271,642	\$271,642

3. *Sound requirements based on the length of a vessel.* Other modifications to sound requirements include the usage of a bell on certain vessels, and the relaxation of frequency standards for other vessels. As stated in the paragraphs dealing with cost savings, vessels of 12 meters or more in length are not required to have a bell. Should the owner choose to retain the bell and then decide to use it, the bell must be used at 2-minute intervals.

For whistles used on vessels of less than 75 meters in length, the acceptable

range for frequencies would be expanded. This provision does allow for the purchase of whistles that sound in the newly expanded ranges. The required sound pressure levels for vessels of 20 meters or more in length would also be relaxed. Currently, whistles for these vessels need to project the appropriate sound pressure levels measured at multiple frequency ranges. Our proposed rule would require the whistle to obtain a single minimum sound pressure level, which is based on

the vessel’s length, and is measured at only one frequency range.

There would be no cost for this provision as this does not require the replacement of an existing whistle as those would still be within the proposed standards. Instead, purchasers of new whistles would have greater whistle options.

4. *High-speed Craft.* The proposed lighting requirement replaces the established formula for placement of masthead lighting for new, high-speed vessels of 50 meters or greater in length

<sup>7</sup> The cost to purchase an 8-inch bell is based on publically available information. Costs range between \$109 and \$489, making the average cost price \$299. Date accessed April 2012. Low cost: <http://www.westmarine.com/webapp/wcs/stores/servlet/ProductDisplay?productId=101003&>

[catalogId=10001&langId=-1&storeId=11151&storeNum=50751&subdeptNum=50765&classNum=50766](http://www.westmarine.com/webapp/wcs/stores/servlet/ProductDisplay?productId=10001&langId=-1&storeId=11151&storeNum=50751&subdeptNum=50765&classNum=50766). High cost: <http://www.wmmarine.com/34437.html>.

<sup>8</sup> Based on subject matter experts including industry and Coast Guard, manufacturers of

recreational vessels do not install bells on the vessels. In order to comply with current regulations, owners would purchase a bell 200 mm in diameter (approx. 8 inches) on the retail market and install it themselves.

with length to beam ratios greater than 3. This proposed formula, if promulgated would set a lower minimum height for the main masthead light than the current U.S. formula. This modification is needed because wide, high speed vessels often operate with some angle of trim,<sup>9</sup> which makes complying with the original formula onerous. The proposed formula accounts for trim, and aligns U.S. regulation with international standards. We anticipate that this proposed formula would not change the lighting requirements for existing vessels as the proposed formula is less strict about the height of the masthead (forward and main mast). We also anticipate that this requirement will maintain an equivalent level of safety as that provided by the current formula for mast head height.

**5. Radiotelegraphs and Radiotelephones alarms and updates to approved emergency distress call equipment.** Another COLREGS change involves the removal of radiotelegraph alarms and radiotelephone alarms as approved equipment for announcing distress except via Morse Code SOS. This type of equipment is currently obsolete and is no longer used by industry. Also, this change was made in SOLAS V in 1999. It was also instituted domestically by the Coast Guard since the 1990s and has been in effect since then.<sup>10</sup> We found no companies that use this equipment for distress signals. Since no vessel uses this equipment, there is no cost to purchase new equipment and no cost to remove this reference.

**6. Partially sunken vessels and objects being towed in combination.** Currently, partially submerged vessels or objects being towed must follow certain lighting and shape requirements. This provision would state that any combination of these two items being towed would also need to follow the same lighting and shape requirements. The main intent of this change is to conform with COLREGS. This provision was listed in COLREGS, but was accidentally left out when the provision was transferred to our regulations. Combinations of towed objects may be lit the same as individual objects. This means there are no additional lighting requirements that exist for combinations that didn't exist for individuals.

Other harmonizing changes to the CFR are non-substantive and simply align current regulations to match the

formatting of COLREGS (refer to Table 4 for the summary of these non-substantive changes). Overall, we estimate that the harmonizing provisions of this proposed rule would have no cost to industry.

As noted above, there is a second category of changes being proposed by this NPRM, which recommendations from NAVSAC. These changes represent discretionary actions on the part of the Coast Guard. The recommended changes from NAVSAC allow for the use of additional equipment as a means of reducing risk of collision. Specifically, NAVSAC recommended the optional use of an all-round white light. NAVSAC also recommended changes to navigation requirements. Vessels would have the option of using the latest technology in navigational equipment besides radar, requiring that if such equipment is installed, it must be used for collision avoidance. As optional requirements, the Coast Guard anticipates that only those vessel owners/operators that foresee a benefit (safety or otherwise) greater than costs would install such a light—neither of these costs nor benefits are estimated here. Also, because neither of these changes would require the purchase of new equipment, they do not carry any costs.

One final change proposed by this NPRM is to correct contradictory requirements that currently exist in the CFR regarding the placement of lights. 33 CFR 83.26 Paragraph (c) defines the lights used by a vessel engaged in fishing other than trawling. The first paragraph (c), which was correct in U.S.C. and only was inadvertently changed in 2010 when the Inland Navigation Rules were transferred to CFR, describes the lights for vessels engaged in trawling which are correctly defined in paragraph (b). The second paragraph (c) correctly describes the lights required by vessels engaged in fishing other than trawling. Should vessel owners try to comply with both requirements, there would be no replacement cost because they would be complying with the correct one. In the event that vessel owners were confused as to which paragraph (c) to follow, we assume that owners would have verified which one by checking COLREGS. Since this change will not require the purchase of additional equipment, but rather reduce confusion in regulation, this change would not require an additional cost burden to vessel owners.

Since the overall impact of this proposed rule is to relax existing requirements on certain vessels, the only cost in this proposed rule is the cost to install an all-round red light on

future WIG craft. Since the remaining changes would not involve a change in compliance standards, there are no costs associated with the other requirements.

#### Benefits

Benefits from harmonizing current inland navigation rules with the COLREGS would be ensuring that the United States, as a signatory to the COLREGS, aligns its domestic regulations as close as practicable to the international standards. Publishing these regulations in the CFR provides greater awareness to the public of changes to the COLREGS and allows for greater public input in terms of its application to inland navigation. Modifying the format and numbering of the regulations to match the formatting and numbering of COLREGS allows for ease of use in terms of referencing either document for requirements.

The more significant COLREGS changes primarily expand current options available for vessels to use, particularly for those dealing with lighting and sound. As a result, vessel owners or operators would find it easier to comply with the proposed regulations than with the existing ones.

Specific benefits from the more significant COLREGS changes are as follows:

**1. Wing-in-Ground (WIG) Craft.** Adding WIG craft to the list of vessels conforms with COLREGS. Given the possibility of future growth, these changes provide WIG craft guidance on navigation and lighting.

**2. New vessels of 12 meters or more, but less than 20 meters, in length.** Vessels of this length no longer need a bell. Not having a bell provides greater regulatory flexibility. If the vessel has a bell, the vessel must use it properly. Proper usage of a bell reduces risk of collision if proper sound signal is used during reduced visibility.

**3. Sound requirements based on the length of a vessel.** This change expands the acceptable range for fundamental frequencies, which provides less stringent standards and allows for greater options of whistles for new vessels.

**4. High-speed Craft.** The proposed regulation changes the lighting formula, making lighting requirements more lenient by accommodating new vessels with novel designs. This change conforms with COLREGS.

**5. Radiotelegraphs and Radiotelephones alarms and updates to approved emergency distress call equipment.** This change provides regulatory flexibility by updating the list of approved distress signal equipment to

<sup>9</sup> Angle of trim describes the orientation of a vessel with respect to the water. For example, zero trim occurs when the fore and aft drafts are the same.

<sup>10</sup> <http://www.gpo.gov/fdsys/pkg/FR-1995-01-27/pdf/95-2092.pdf>.

incorporate the latest technologies and remove outdated ones.

6. *Partially sunken vessels and objects being towed in combination.* Objects being towed must follow certain lighting and shape requirements. Towing multiple or combinations of such vessels and objects would also need to follow the same lighting and shape requirements. This conforms with COLREGS.

This proposed rule also includes benefits from incorporating NAVSAC and NBSAC recommended regulations. NAVSAC recommended the optional use of an all-round white light. Should owners opt to install an all-round white light to a vessel of less than 7 meters in length or a vessel under oars, the benefit would be greater visibility for that vessel. Greater visibility would reduce the risk of collision, particularly in the period between sunset and sunrise and during periods of reduced visibility.

NAVSAC also recommended changes to navigation requirements, such as requiring vessels to use navigation technology for collision avoidance purposes. Adopting the requirement to use already installed navigational technology for collision avoidance purposes reduces the risk of a collision.

Finally this NPRM proposes fixing an erroneous, contradictory provision in the regulations. Removing the contradictory paragraph provides a clear standard that vessel owners can follow.

All of these recommendations would provide greater regulatory flexibility as a means of reducing risk of collision.

#### B. 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.

As discussed in the cost section of this regulatory analysis, the primary purpose of this proposed rule is to align existing domestic law with international law, but there are also discretionary proposals included in this NPRM. Compliance with both harmonizing and discretionary provisions would not require any additional burden to vessel owners, including small entities. Most harmonizing changes would be made to use consistent formatting between the CFR and COLREGS, which in turn provides ease of use for owners. New vessels would have greater options in

terms of lighting modifications, navigation equipment, and sound equipment.

Discretionary changes would also provide greater regulatory flexibility to small entities in terms of allowing the use of optional lighting and additional navigational equipment. We conclude that there would be no additional costs to small entities complying with this proposed rule. There would be a cost savings for vessel manufacturers who would no longer need to install a bell for vessels of equal to or more than 12 meters, but less than 20 meters, in length. The only cost of the proposed rule would be for one new WIG craft a year to install an all-round, high-intensity red light for about \$112.<sup>5</sup> Currently, we estimate there are no small entities affected by this proposed rule that plan to operate new WIG crafts.

As there are small costs and a net cost savings associated with this proposed rule, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

#### C. 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LCDR Megan Cull by phone at, (202) 372–1565 or via email at [Megan.L.Cull@uscg.mil](mailto:Megan.L.Cull@uscg.mil). The Coast

<sup>5</sup> There has been some experimentation in developing WIG craft in some other countries, which would explain the additional language to incorporate WIG craft into regulation. Currently, there are only 3 currently in existence internationally and none in the U.S. News regarding the Singaporean-flagged WIG craft: [http://www.wigetworks.com/pdf/Press\\_Release-MV\\_Airfish\\_8\\_Christening\\_Ceremony.pdf](http://www.wigetworks.com/pdf/Press_Release-MV_Airfish_8_Christening_Ceremony.pdf). News regarding the two Korean WIG craft: <http://articles.maritimepropulsion.com/article/Wing-in-Ground-Effect-Craft-e28093-Future-is-Here-Say-Korean-Shipbuilders41727.aspx>.

Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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).

#### D. 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).

#### E. 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.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. In 33 U.S.C. 2071, Congress specifically granted to the Secretary the authority to prescribe “inland navigation regulations applicable to all vessels upon the inland waters of the United States and technical annexes that are as consistent as possible with the respective annexes to the International Regulations.” As this proposed rulemaking would update existing inland navigation regulations, it falls within the scope of authority Congress granted exclusively to the Secretary and States may not regulate within this category.

#### F. 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.

### G. 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.

### H. 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.

### I. 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.

### J. 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.

### K. Energy Effects

The Coast Guard has analyzed this proposed 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.

### L. Technical Standards

The National Technology Transfer and Advancement Act (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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### M. 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 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. This rule is likely to be categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(i) of the Instruction and 6(a) of the **Federal Register**, Vol. 67, No. 141, Tuesday, July 23, 2002, page 48243. This rule involves regulations that are in aid of navigation, such as those concerning the rules of the road, COLREGS, bridge-to-bridge communications, vessel traffic services, and marking of navigation systems. An environmental analysis checklist is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### List of Subjects

#### 33 CFR Part 83

Navigation (water), Waterways.

#### 33 CFR Part 84

Incorporation by reference, Navigation (water), Waterways.

#### 33 CFR Part 85

Fishing vessels, Navigation (water), Waterways.

#### 33 CFR Part 86

Navigation (water), Waterways.

#### 33 CFR Part 87

Navigation (water), Waterways.

#### 33 CFR Part 88

Navigation (water), Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 83 through 88 as follows:

## TITLE 33: NAVIGATION AND NAVIGABLE WATERS

1. Revise part 83 to read as follows:

### PART 83—RULES

#### Subpart A—General

- Sec.
- 83.01 Application (Rule 1).
  - 83.02 Responsibility (Rule 2).
  - 83.03 General definitions (Rule 3).

#### Subpart B—Steering and Sailing Rules

##### Conduct of Vessels in Any Condition of Visibility

- 83.04 Application (Rule 4).
- 83.05 Look-out (Rule 5).
- 83.06 Safe speed (Rule 6).
- 83.07 Risk of collision (Rule 7).
- 83.08 Action to avoid collision (Rule 8).
- 83.09 Narrow channels (Rule 9).
- 83.10 Traffic separation schemes (Rule 10).

##### Conduct of Vessels in Sight of One Another

- 83.11 Application (Rule 11).
- 83.12 Sailing vessels (Rule 12).
- 83.13 Overtaking (Rule 13).
- 83.14 Head-on situation (Rule 14).
- 83.15 Crossing situation (Rule 15).
- 83.16 Action by give-way vessel (Rule 16).
- 83.17 Action by stand-on vessel (Rule 17).
- 83.18 Responsibilities between vessels (Rule 18).

##### Conduct of Vessels in Restricted Visibility

- 83.19 Conduct of vessels in restricted visibility (Rule 19).

#### Subpart C—Lights and Shapes

- 83.20 Application (Rule 20).
- 83.21 Definitions (Rule 21).
- 83.22 Visibility of lights (Rule 22).
- 83.23 Power-driven vessels underway (Rule 23).
- 83.24 Towing and pushing (Rule 24).
- 83.25 Sailing vessels underway and vessels under oars (Rule 25).
- 83.26 Fishing vessels (Rule 26).
- 83.27 Vessels not under command or restricted in their ability to maneuver (Rule 27).
- 83.28 [Reserved] (Rule 28).
- 83.29 Pilot vessels (Rule 29).
- 83.30 Anchored vessels and vessels aground (Rule 30).
- 83.31 Seaplanes (Rule 31).

#### Subpart D—Sound and Light Signals

- 83.32 Definitions (Rule 32).
- 83.33 Equipment for sound signals (Rule 33).
- 83.34 Maneuvering and warning signals (Rule 34).
- 83.35 Sound signals in restricted visibility (Rule 35).
- 83.36 Signals to attract attention (Rule 36).
- 83.37 Distress signals (Rule 37).

#### Subpart E—Exemptions

- 83.38 Exemptions (Rule 38).

**Authority:** Sec. 303, Pub. L. 108–293, 118 Stat. 1028 (33 U.S.C. 2001); Department of Homeland Security Delegation No. 0170.1.

## Subpart A—General

### § 83.01 Application (Rule 1).

(a) These Rules apply to all vessels upon the inland waters of the United States, and to vessels of the United States on the Canadian waters of the Great Lakes to the extent that there is no conflict with Canadian law. The regulations in this subchapter have preemptive effect over State or local regulation within the same field.

(b)(i) These Rules constitute special rules made by an appropriate authority within the meaning of Rule 1(b) of the International Regulations for Preventing Collisions at Sea, 1972, including annexes currently in force for the United States (“International Regulations”).

(ii) All vessels complying with the construction and equipment requirements of the International Regulations are considered to be in compliance with these Rules.

(c) Nothing in these Rules shall interfere with the operation of any special rules made by the Secretary of the Navy with respect to additional station or signal lights and shapes or whistle signals for ships of war and vessels proceeding under convoy, or by the Secretary with respect to additional station or signal lights and shapes for fishing vessels engaged in fishing as a fleet. These additional station or signal lights and shapes or whistle signals shall, so far as possible, be such that they cannot be mistaken for any light, shape, or signal authorized elsewhere under these Rules. Notice of such special rules shall be published in the **Federal Register** and, after the effective date specified in such notice, they shall have effect as if they were a part of these Rules.

(d) Traffic separation schemes may be established for the purpose of these Rules. Vessel traffic service regulations may be in effect in certain areas.

(e) Whenever the Secretary determines that a vessel or class of vessels of special construction or purpose cannot comply fully with the provisions of any of these Rules with respect to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, the vessel shall comply with such other provisions in regard to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, as the

Secretary shall have determined to be the closest possible compliance with these Rules. The Secretary may issue a certificate of alternative compliance for a vessel or class of vessels specifying the closest possible compliance with these Rules. The Secretary of the Navy shall make these determinations and issue certificates of alternative compliance for vessels of the Navy.

(f) The Secretary may accept a certificate of alternative compliance issued by a contracting party to the International Regulations if it determines that the alternative compliance standards of the contracting party are substantially the same as those of the United States.

(g) The operator of each self-propelled vessel 12 meters or more in length shall carry on board and maintain for ready reference a copy of these Rules.

### § 83.02 Responsibility (Rule 2).

(a) Nothing in these Rules shall exonerate any vessel, or the owner, master, or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

(b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.

### § 83.03 General definitions (Rule 3).

For the purpose of these Rules and this chapter, except where the context otherwise requires:

(a) The word *vessel* includes every description of water craft, including nondisplacement craft, WIG craft and seaplanes, used or capable of being used as a means of transportation on water;

(b) The term *power-driven vessel* means any vessel propelled by machinery;

(c) The term *sailing vessel* means any vessel under sail provided that propelling machinery, if fitted, is not being used;

(d) The term *vessel engaged in fishing* means any vessel fishing with nets, lines, trawls, or other fishing apparatus which restricts maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability;

(e) The word *seaplane* includes any aircraft designed to maneuver on the water;

(f) The term *vessel not under command* means a vessel which,

through some exceptional circumstance, is unable to maneuver as required by these Rules and is therefore unable to keep out of the way of another vessel;

(g) The term *vessel restricted in her ability to maneuver* means a vessel which, from the nature of her work, is restricted in her ability to maneuver as required by these Rules and is therefore unable to keep out of the way of another vessel; vessels restricted in their ability to maneuver include, but are not limited to:

(i) A vessel engaged in laying, servicing, or picking up a navigation mark, submarine cable, or pipeline;

(ii) A vessel engaged in dredging, surveying, or underwater operations;

(iii) A vessel engaged in replenishment or transferring persons, provisions, or cargo while underway;

(iv) A vessel engaged in the launching or recovery of aircraft;

(v) A vessel engaged in mine clearance operations; and

(vi) A vessel engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course.

(h) [Reserved]

(i) The word *underway* means that a vessel is not at anchor, or made fast to the shore, or aground;

(j) The words *length* and *breadth* of a vessel mean her length overall and greatest breadth;

(k) Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other;

(l) The term *restricted visibility* means any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms, or any other similar causes;

(m) The term *Wing-In-Ground (WIG) craft* means a multimodal craft which, in its main operational mode, flies in close proximity to the surface by utilizing surface-effect action;

(n) *Western Rivers* means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen-Morgan City Alternate Route, and that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternate Route including the Old River and the Red River;

(o) *Great Lakes* means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between mile 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between mile 321 and 322), and the

Saint Lawrence River as far east as the lower exit of Saint Lambert Lock;

(p) *Secretary* means the Secretary of the Department in which the Coast Guard is operating;

(q) *Inland Waters* means the navigable waters of the United States shoreward of the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States and the waters of the Great Lakes on the United States side of the International Boundary;

(r) *Inland Rules or Rules* mean the Inland Navigational Rules and the annexes thereto, which govern the conduct of vessels and specify the lights, shapes, and sound signals that apply on inland waters; and

(s) *International Regulations* means the International Regulations for Preventing Collisions at Sea, 1972, including annexes currently in force for the United States.

## Subpart B—Steering and Sailing Rules

### Conduct of Vessels in Any Condition of Visibility

#### § 83.04 Application (Rule 4).

Rules in this subpart apply in any condition of visibility.

#### § 83.05 Look-out (Rule 5).

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

#### § 83.06 Safe speed (Rule 6).

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

In determining a safe speed the following factors shall be among those taken into account:

- (a) By all vessels:
  - (i) The state of visibility;
  - (ii) The traffic density including concentration of fishing vessels or any other vessels;
  - (iii) The maneuverability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
  - (iv) At night, the presence of background light such as from shores lights or from back scatter of her own lights;
  - (v) The state of wind, sea, and current, and the proximity of navigational hazards; and
  - (vi) The draft in relation to the available depth of water.

(b) Additionally, by vessels with operational radar:

- (i) The characteristics, efficiency and limitations of the radar equipment;
- (ii) Any constraints imposed by the radar range scale in use;
- (iii) The effect on radar detection of the sea state, weather, and other sources of interference;
- (iv) The possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range;
- (v) The number, location, and movement of vessels detected by radar; and
- (vi) The more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity.

#### § 83.07 Risk of collision (Rule 7).

(a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.

(b) Proper use shall be made of radar and other electronic equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.

(c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.

(d) In determining if risk of collision exists the following considerations shall be among those taken into account:

- (i) Such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change; and
- (ii) Such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

#### § 83.08 Action to avoid collision (Rule 8).

(a) Any action taken to avoid collision shall be taken in accordance with the Rules of this Part and shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

(b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

(c) If there is sufficient sea room, alteration of course alone may be the

most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.

(e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

(f)(i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

(ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this part.

(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of this part when the two vessels are approaching one another so as to involve risk of collision.

#### § 83.09 Narrow channels (Rule 9).

(a)(i) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.

(ii) Notwithstanding paragraph (a)(i) of this Rule 9 and Rule 14(a) (33 CFR 83.14(a)), a power-driven vessel operating in narrow channels or fairways on the Great Lakes, Western Rivers, or waters specified by the Secretary, and proceeding downbound with a following current shall have the right-of-way over an upbound vessel, shall propose the manner and place of passage, and shall initiate the maneuvering signals prescribed by Rule 34(a)(i) (33 CFR 83.34(a)(i)), as appropriate. The vessel proceeding upbound against the current shall hold as necessary to permit safe passing.

(b) A vessel of less than 20 meters in length or a sailing vessel shall not impede the passage of a vessel that can safely navigate only within a narrow channel or fairway.

(c) A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.

(d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within that channel or fairway. The latter vessel shall use the danger signal prescribed in Rule 34(d) (33 CFR 83.34(d)) if in doubt as to the intention of the crossing vessel.

(e)(i) In a narrow channel or fairway when overtaking, the power-driven vessel intending to overtake another power-driven vessel shall indicate her intention by sounding the appropriate signal prescribed in Rule 34(c) (33 CFR 83.34(c)) and take steps to permit safe passing. The power-driven vessel being overtaken, if in agreement, shall sound the same signal and may, if specifically agreed to, take steps to permit safe passing. If in doubt she shall sound the danger signal prescribed in Rule 34(d) (33 CFR 83.34(d)).

(ii) This Rule does not relieve the overtaking vessel of her obligation under Rule 13 (33 CFR 83.13).

(f) A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in Rule 34(e) (33 CFR 83.34(e)).

(g) Any vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.

#### **§ 83.10 Traffic separation schemes (Rule 10).**

(a) This Rule 10 applies to traffic separation schemes and does not relieve any vessel of her obligation under any other Rule in this part.

(b) A vessel using a traffic separation scheme shall:

(i) Proceed in the appropriate traffic lane in the general direction of traffic flow for that lane;

(ii) So far as practicable keep clear of a traffic separation line or separation zone;

(iii) Normally join or leave a traffic lane at the termination of the lane, but when joining or leaving from either side shall do so at as small an angle to the general direction of traffic flow as practicable.

(c) A vessel shall, so far as practicable, avoid crossing traffic lanes but if obliged to do so shall cross on a heading as nearly as practicable at right angles to the general direction of traffic flow.

(d)(i) A vessel shall not use an inshore traffic zone when she can safely use the appropriate traffic lane within the adjacent traffic separation scheme. However, vessels of less than twenty meters in length, sailing vessels, and

vessels engaged in fishing may use the inshore traffic zone.

(ii) Notwithstanding paragraph (d)(i) of this Rule 10, a vessel may use an inshore traffic zone when en route to or from a port, offshore installation or structure, pilot station, or any other place situated within the inshore traffic zone, or to avoid immediate danger.

(e) A vessel other than a crossing vessel or a vessel joining or leaving a lane shall not normally enter a separation zone or cross a separation line except:

(i) In cases of emergency to avoid immediate danger; or

(ii) To engage in fishing within a separation zone.

(f) A vessel navigating in areas near the terminations of traffic separation schemes shall do so with particular caution.

(g) A vessel shall so far as practicable avoid anchoring in a traffic separation scheme or in areas near its terminations.

(h) A vessel not using a traffic separation scheme shall avoid it by as wide a margin as is practicable.

(i) A vessel engaged in fishing shall not impede the passage of any vessel following a traffic lane.

(j) A vessel of less than 20 meters in length or a sailing vessel shall not impede the safe passage of a power-driven vessel following a traffic lane.

(k) A vessel restricted in her ability to maneuver when engaged in an operation for the maintenance of safety of navigation in a traffic separation scheme is exempted from complying with this Rule to the extent necessary to carry out the operation.

(l) A vessel restricted in her ability to maneuver when engaged in an operation for the laying, servicing, or picking up of a submarine cable, within a traffic separation scheme, is exempted from complying with this Rule to the extent necessary to carry out the operation.

#### **Conduct of Vessels in Sight of One Another**

##### **§ 83.11 Application (Rule 11).**

Rules in this subpart apply to vessels in sight of one another.

##### **§ 83.12 Sailing vessels (Rule 12).**

(a) When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows:

(i) When each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;

(ii) When both have the wind on the same side, the vessel which is to

windward shall keep out of the way of the vessel which is to leeward; and

(iii) If a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, she shall keep out of the way of the other.

(b) For the purpose of this Rule the windward side shall be deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried.

##### **§ 83.13 Overtaking (Rule 13).**

(a) Notwithstanding anything contained in Rules 4 through 18 (33 CFR 83.04 through 83.18)), any vessel overtaking any other shall keep out of the way of the vessel being overtaken.

(b) A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam; that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the sternlight of that vessel but neither of her sidelights.

(c) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.

(d) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

##### **§ 83.14 Head-on situation (Rule 14).**

(a) Unless otherwise agreed, when two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other.

(b) Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line or nearly in a line or both sidelights and by day she observes the corresponding aspect of the other vessel.

(c) When a vessel is in any doubt as to whether such a situation exists she shall assume that it does exist and act accordingly.

(d) Notwithstanding paragraph (a) of this Rule 14, a power-driven vessel operating on the Great Lakes, Western Rivers, or waters specified by the Secretary, and proceeding downbound with a following current shall have the right-of-way over an upbound vessel,

shall propose the manner of passage, and shall initiate the maneuvering signals prescribed by Rule 34(a)(i) (33 CFR 83.34(a)(i)), as appropriate.

**§ 83.15 Crossing situation (Rule 15).**

(a) When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

(b) Notwithstanding paragraph (a) of this Rule 15, on the Great Lakes, Western Rivers, or water specified by the Secretary, a power-driven vessel crossing a river shall keep out of the way of a power-driven vessel ascending or descending the river.

**§ 83.16 Action by give-way vessel (Rule 16).**

Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.

**§ 83.17 Action by stand-on vessel (Rule 17).**

(a)(i) Where one of two vessels is to keep out of the way, the other shall keep her course and speed.

(ii) The latter vessel may, however, take action to avoid collision by her maneuver alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.

(b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.

(c) A power-driven vessel which takes action in a crossing situation in accordance with paragraph (a)(ii) of this Rule 17, to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.

(d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

**§ 83.18 Responsibilities between vessels (Rule 18).**

Except where Rules 9, 10, and 13 (33 CFR 83.09, 83.10, and 83.13)) otherwise require:

(a) A power-driven vessel underway shall keep out of the way of:

- (i) A vessel not under command;
- (ii) A vessel restricted in her ability to maneuver;
- (iii) A vessel engaged in fishing; and

(iv) a sailing vessel.

(b) A sailing vessel underway shall keep out of the way of:

(i) A vessel not under command;

(ii) A vessel restricted in her ability to maneuver; and

(iii) A vessel engaged in fishing.

(c) A vessel engaged in fishing when underway shall, so far as possible, keep out of the way of:

(i) A vessel not under command; and

(ii) A vessel restricted in her ability to maneuver.

(d) [Reserved].

(e) A seaplane on the water shall, in general, keep well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, she shall comply with the Rules of this Part.

(f)(i) A WIG craft shall when taking off, landing and in flight near the surface, keep well clear of all other vessels and avoid impeding their navigation;

(ii) A WIG craft operating on the water surface shall comply with the Rules of this Part as a power-driven vessel.

**Conduct of Vessels in Restricted Visibility**

**§ 83.19 Conduct of vessels in restricted visibility (Rule 19).**

(a) This Rule applies to vessels not in sight of one another when navigating in or near an area of restricted visibility.

(b) Every vessel shall proceed at a safe speed adapted to the prevailing circumstances and conditions of restricted visibility. A power-driven vessel shall have her engines ready for immediate maneuver.

(c) Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with Rules 4 through 10 (33 CFR 83.04 through 83.10)).

(d) A vessel which detects by radar alone the presence of another vessel shall determine if a close-quarters situation is developing or risk of collision exists. If so, she shall take avoiding action in ample time, provided that when such action consists of an alteration of course, so far as possible the following shall be avoided:

(i) An alteration of course to port for a vessel forward of the beam, other than for a vessel being overtaken; and

(ii) An alteration of course toward a vessel abeam or abaft the beam.

(e) Except where it has been determined that a risk of collision does not exist, every vessel which hears apparently forward of her beam the fog signal of another vessel, or which cannot avoid a close-quarters situation with another vessel forward of her

beam, shall reduce her speed to the minimum at which she can be kept on course. She shall if necessary take all her way off and, in any event, navigate with extreme caution until danger of collision is over.

**Subpart C—Lights and Shapes**

**§ 83.20 Application (Rule 20).**

(a) Rules in this part shall be complied with in all weathers.

(b) The Rules concerning lights shall be complied with from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with the keeping of a proper look-out.

(c) The lights prescribed by these Rules shall, if carried, also be exhibited from sunrise to sunset in restricted visibility and may be exhibited in all other circumstances when it is deemed necessary.

(d) The Rules concerning shapes shall be complied with by day.

(e) The lights and shapes specified in these Rules shall comply with the provisions of Annex I of these Rules (33 CFR part 84).

(f) A vessel's navigation lights and shapes may be lowered if necessary to pass under a bridge.

**§ 83.21 Definitions (Rule 21).**

(a) *Masthead light* means a white light placed over the fore and aft centerline of the vessel showing an unbroken light over an arc of the horizon of 225 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on either side of the vessel, except that on a vessel of less than 12 meters in length the masthead light shall be placed as nearly as practicable to the fore and aft centerline of the vessel.

(b) *Sidelights* mean a green light on the starboard side and a red light on the port side each showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side. On a vessel of less than 20 meters in length the side lights may be combined in one lantern carried on the fore and aft centerline of the vessel, except that on a vessel of less than 12 meters in length the sidelights when combined in one lantern shall be placed as nearly as practicable to the fore and aft centerline of the vessel.

(c) *Sternlight* means a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135 degrees and so

fixed as to show the light 67.5 degrees from right aft on each side of the vessel.

(d) *Towing light* means a yellow light having the same characteristics as the "sternlight" defined in paragraph (c) of this Rule.

(e) *All-round light* means a light showing an unbroken light over an arc of the horizon of 360 degrees.

(f) *Flashing light* means a light flashing at regular intervals at a frequency of 120 flashes or more per minute.

(g) *Special flashing light* means a yellow light flashing at regular intervals at a frequency of 50 to 70 flashes per minute, placed as far forward and as nearly as practicable on the fore and aft centerline of the tow and showing an unbroken light over an arc of the horizon of not less than 180 degrees nor more than 225 degrees and so fixed as to show the light from right ahead to abeam and no more than 22.5 degrees abaft the beam on either side of the vessel.

#### § 83.22 Visibility of lights (Rule 22).

The lights prescribed in these Rules shall have an intensity as specified in Annex I to these Rules (33 CFR part 84), so as to be visible at the following minimum ranges:

(a) In a vessel of 50 meters or more in length:

- A masthead light, 6 miles;
- A sidelight, 3 miles;
- A sternlight, 3 miles;
- A towing light, 3 miles;
- A white, red, green or yellow all-round light, 3 miles; and
- A special flashing light, 2 miles.

(b) In a vessel of 12 meters or more in length but less than 50 meters in length:

- A masthead light, 5 miles; except that where the length of the vessel is less than 20 meters, 3 miles;
- A sidelight, 2 miles;
- A sternlight, 2 miles;
- A towing light, 2 miles;
- A white, red, green or yellow all-round light, 2 miles; and
- A special flashing light, 2 miles.

(c) In a vessel of less than 12 meters in length:

- A masthead light, 2 miles;
- A sidelight, 1 mile;
- A sternlight, 2 miles;
- A towing light, 2 miles;
- A white, red, green or yellow all-round light, 2 miles; and
- A special flashing light, 2 miles.

(d) In an inconspicuous, partly submerged vessel or objects being towed:

- A white all-round light, 3 miles.

#### § 83.23 Power-driven vessels underway (Rule 23).

(a) A power-driven vessel underway shall exhibit:

- (i) A masthead light forward;
- (ii) A second masthead light abaft of and higher than the forward one; except that a vessel of less than 50 meters in length shall not be obliged to exhibit such light but may do so;
- (iii) Sidelights; and
- (iv) A sternlight.

(b) An air-cushion vessel when operating in the non-displacement mode shall, in addition to the lights prescribed in paragraph (a) of this Rule 23, exhibit an all-round flashing yellow light where it can best be seen.

(c) A WIG craft only when taking off, landing and in flight near the surface shall, in addition to the lights prescribed in paragraph (a) of this Rule 23, exhibit a high intensity all-round flashing red light.

(d) A power-driven vessel of less than 12 meters in length may, in lieu of the lights prescribed in paragraph (a) of this Rule 23, exhibit an all-round white light and sidelights.

(e) A power-driven vessel when operating on the Great Lakes may carry an all-round white light in lieu of the second masthead light and sternlight prescribed in paragraph (a) of this Rule 23. The light shall be carried in the position of the second masthead light and be visible at the same minimum range.

#### § 83.24 Towing and pushing (Rule 24).

(a) A power-driven vessel when towing astern shall exhibit:

(i) Instead of the light prescribed either in Rule 23(a)(i) or 23(a)(ii), two masthead lights in a vertical line. When the length of the tow, measuring from the stern of the towing vessel to the after end of the tow exceeds 200 meters, three such lights in a vertical line;

- (ii) Sidelights;
- (iii) A sternlight;
- (iv) A towing light in a vertical line above the sternlight; and

(v) When the length of the tow exceeds 200 meters, a diamond shape where it can best be seen.

(b) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and exhibit the lights prescribed in Rule 23 (33 CFR 83.23).

(c) A power-driven vessel when pushing ahead or towing alongside, except as required by paragraphs (b) and (i) of this Rule 24, shall exhibit:

(i) Instead of the light prescribed either in Rule 23(a)(i) or 23(a)(ii), two masthead lights in a vertical line;

(ii) Sidelights;

(iii) Two towing lights in a vertical line.

(d) A power-driven vessel to which paragraphs (a) or (c) of this Rule 24 apply shall also comply with Rule 23(a)(i) and 23(a)(ii).

(e) A vessel or object other than those referred to in paragraph (g) of this Rule 24 being towed shall exhibit:

- (i) Sidelights;
- (ii) A sternlight; and
- (iii) When the length of the tow exceeds 200 meters, a diamond shape where it can best be seen.

(f) Provided that any number of vessels being towed alongside or pushed in a group shall be lighted as one vessel, except as provided in paragraph (f)(iii) of this Rule 24—

(i) A vessel being pushed ahead, not being part of a composite unit, shall exhibit at the forward end, sidelights and a special flashing light;

(ii) A vessel being towed alongside shall exhibit a sternlight and at the forward end, sidelights and a special flashing light; and

(iii) When vessels are towed alongside on both sides of the towing vessels a sternlight shall be exhibited on the stern of the outboard vessel on each side of the towing vessel, and a single set of sidelights as far forward and as far outboard as is practicable, and a single special flashing light.

(g) An inconspicuous, partly submerged vessel or object, or combination of such vessels or objects being towed, shall exhibit:

(i) If it is less than 25 meters in breadth, one all-round white light at or near each end;

(ii) If it is 25 meters or more in breadth, four all-round white lights to mark its length and breadth;

(iii) If it exceeds 100 meters in length, additional all-round white lights between the lights prescribed in paragraphs (g)(i) and (ii) of this Rule 24 so that the distance between the lights shall not exceed 100 meters: Provided, that any vessels or objects being towed alongside each other shall be lighted as one vessel or object;

(iv) A diamond shape at or near the aftermost extremity of the last vessel or object being towed;

(v) The towing vessel may direct a searchlight in the direction of the tow to indicate its presence to an approaching vessel.

(h) Where from any sufficient cause it is impracticable for a vessel or object being towed to exhibit the lights prescribed in paragraph (e) or (g) of this Rule 24, all possible measures shall be taken to light the vessel or object towed or at least to indicate the presence of the unlighted vessel or object.

(i) Notwithstanding paragraph (c) of this Rule 24, on the Western Rivers (except below the Huey P. Long Bridge on the Mississippi River) and on waters specified by the Secretary, a power-driven vessel when pushing ahead or towing alongside, except as paragraph (b) of this Rule 24 applies, shall exhibit:

(i) Sidelights; and  
(ii) Two towing lights in a vertical line.

(j) Where from any sufficient cause it is impracticable for a vessel not normally engaged in towing operations to display the lights prescribed by paragraph (a), (c) or (i) of this Rule 24, such vessel shall not be required to exhibit those lights when engaged in towing another vessel in distress or otherwise in need of assistance. All possible measures shall be taken to indicate the nature of the relationship between the towing vessel and the vessel being assisted. The searchlight authorized by Rule 36 (33 CFR 83.36) may be used to illuminate the tow.

(k) The following barges shall display at night and if practicable in periods of restricted visibility the lights described in paragraph (m) of this Rule 24:

(i) Every barge projecting into a buoyed or restricted channel.

(ii) Every barge so moored that it reduces the available navigable width of any channel to less than 80 meters.

(iii) Barges moored in groups more than two barges wide or to a maximum width of over 25 meters.

(iv) Every barge not moored parallel to the bank or dock.

(l) Barges described in this Rule 24 paragraph (l) shall carry two unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile and meeting the technical requirements as prescribed in 33 CFR 84.15.

(m) A barge or group of barges at anchor or made fast to one or more mooring buoys or other similar device, in lieu of the provisions of Inland Navigation Rule 30, may carry unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile that meet the requirements of 33 CFR 84.15 and shall be arranged as follows:

(i) Any barge that projects from a group formation, shall be lighted on its outboard corners.

(ii) On a single barge moored in water where other vessels normally navigate on both sides of the barge, lights shall be placed to mark the corner extremities of the barge.

(iii) On barges moored in group formation, moored in water where other vessels normally navigate on both sides of the group, lights shall be placed to

mark the corner extremities of the group.

(n) The following are exempt from the requirements of this section:

(i) A barge or group of barges moored in a slip or slough used primarily for mooring purposes.

(ii) A barge or group of barges moored behind a pierhead.

(iii) A barge less than 20 meters in length when moored in a special anchorage area designated in accordance with § 109.10 of this chapter.

(o) Barges moored in well-illuminated areas are exempt from the lighting requirements of this section. These areas are as follows:

#### Chicago Sanitary Ship Canal

- (1) Mile 293.2 to 293.9
- (3) Mile 295.2 to 296.1
- (5) Mile 297.5 to 297.8
- (7) Mile 298 to 298.2
- (9) Mile 298.6 to 298.8
- (11) Mile 299.3 to 299.4
- (13) Mile 299.8 to 300.5
- (15) Mile 303 to 303.2
- (17) Mile 303.7 to 303.9
- (19) Mile 305.7 to 305.8
- (21) Mile 310.7 to 310.9
- (23) Mile 311 to 311.2
- (25) Mile 312.5 to 312.6
- (27) Mile 313.8 to 314.2
- (29) Mile 314.6
- (31) Mile 314.8 to 315.3
- (33) Mile 315.7 to 316
- (35) Mile 316.8
- (37) Mile 316.85 to 317.05
- (39) Mile 317.5
- (41) Mile 318.4 to 318.9
- (43) Mile 318.7 to 318.8
- (45) Mile 320 to 320.3
- (47) Mile 320.6
- (49) Mile 322.3 to 322.4
- (51) Mile 322.8
- (53) Mile 322.9 to 327.2

#### Calumet Sag Channel

(61) Mile 316.5

#### Little Calumet River

- (71) Mile 321.2
- (73) Mile 322.3

#### Calumet River

- (81) Mile 328.5 to 328.7
- (83) Mile 329.2 to 329.4
- (85) Mile 330 west bank to 330.2
- (87) Mile 331.4 to 331.6
- (89) Mile 332.2 to 332.4
- (91) Mile 332.6 to 332.8

#### Cumberland River

- (101) Mile 126.8
- (103) Mile 191

(p) Dredge pipelines that are floating or supported on trestles shall display the following lights at night and in periods of restricted visibility.

(i) One row of yellow lights. The lights must be:

(1) Flashing 50 to 70 times per minute,

(2) Visible all around the horizon,

(3) Visible for at least 2 miles on a clear dark night,

(4) Not less than 1 and not more than 3.5 meters above the water,

(5) Approximately equally spaced, and

(6) Not more than 10 meters apart where the pipeline crosses a navigable channel. Where the pipeline does not cross a navigable channel the lights must be sufficient in number to clearly show the pipeline's length and course.

(ii) Two red lights at each end of the pipeline, including the ends in a channel where the pipeline is separated to allow vessels to pass (whether open or closed). The lights must be:

(1) Visible all around the horizon, and

(2) Visible for at least 2 miles on a clear dark night, and

(3) One meter apart in a vertical line with the lower light at the same height above the water as the flashing yellow light.

#### § 83.25 Sailing vessels underway and vessels under oars (Rule 25).

(a) A sailing vessel underway shall exhibit:

(i) Sidelights; and

(ii) A sternlight.

(b) In a sailing vessel of less than 20 meters in length the lights prescribed in paragraph (a) of this Rule 25 may be combined in one lantern carried at or near the top of the mast where it can best be seen.

(c) A sailing vessel underway may, in addition to the lights prescribed in paragraph (a) of this Rule 25, exhibit at or near the top of the mast, where they can best be seen, two all-round lights in a vertical line, the upper being red and the lower green, but these lights shall not be exhibited in conjunction with the combined lantern permitted by paragraph (b) of this Rule 25.

(d)(i) A sailing vessel of less than 7 meters in length shall, if practicable, exhibit the lights prescribed in paragraph (a) or (b) of this Rule 25, but if she does not, she shall exhibit an all-round white light or have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.

(ii) A vessel under oars may exhibit the lights prescribed in this Rule for sailing vessels, but if she does not, she shall exhibit an all-round white light or have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.

(e) A vessel proceeding under sail when also being propelled by machinery shall exhibit forward where

it can best be seen a conical shape, apex downward. A vessel of less than 12 meters in length is not required to exhibit this shape, but may do so.

**§ 83.26 Fishing vessels (Rule 26).**

(a) A vessel engaged in fishing, whether underway or at anchor, shall exhibit only the lights and shapes prescribed in this Rule.

(b) A vessel when engaged in trawling, by which is meant the dragging through the water of a dredge net or other apparatus used as a fishing appliance, shall exhibit:

(i) Two all-round lights in a vertical line, the upper being green and the lower white, or a shape consisting of two cones with their apexes together in a vertical line one above the other;

(ii) A masthead light abaft of and higher than the all-round green light; a vessel of less than 50 meters in length shall not be obliged to exhibit such a light but may do so; and

(iii) When making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.

(c) A vessel engaged in fishing, other than trawling, shall exhibit:

(i) Two all-round lights in a vertical line, the upper being red and the lower white, or a shape consisting of two cones with apexes together in a vertical line one above the other;

(ii) When there is outlying gear extending more than 150 meters horizontally from the vessel, an all-round white light or a cone apex upward in the direction of the gear; and

(iii) When making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.

(d) [Reserved].

(e) A vessel when not engaged in fishing shall not exhibit the lights or shapes prescribed in this Rule 26, but only those prescribed for a vessel of her length.

(f) Additional Signals for fishing vessels fishing in close proximity:

(i) The lights mentioned herein shall be placed where they can best be seen. They shall be at least 0.9 meter apart but at a lower level than lights prescribed in this Rule. The lights shall be visible all around the horizon at a distance of at least 1 mile but at a lesser distance from the lights prescribed by this Rule 26 (a) through (c) for fishing vessels.

(ii) Signals for trawlers

(1) Vessels when engaged in trawling, whether using demersal or pelagic gear, may exhibit:

(A) When shooting their nets: Two white lights in a vertical line;

(B) When hauling their nets: One white light over one red light in a vertical line;

(C) When a net has come fast upon an obstruction: Two red lights in a vertical line.

(2) Each vessel engaged in pair trawling may exhibit:

(A) By night, a searchlight directed forward and in the direction of the other vessel of the pair;

(B) When shooting or hauling their nets or when their nets have come fast upon an obstruction, the lights prescribed in paragraph (a) of this Rule 26.

(iii) Signals for purse seiners.

(1) Vessels engaged in fishing with purse seine gear may exhibit two yellow lights in a vertical line. These lights shall flash alternately every second and with equal light and occultation duration. These lights may be exhibited only when the vessel is hampered by its fishing gear.

(2) [Reserved].

**§ 83.27 Vessels not under command or restricted in their ability to maneuver (Rule 27).**

(a) A vessel not under command shall exhibit:

(i) Two all-round red lights in a vertical line where they can best be seen;

(ii) Two balls or similar shapes in a vertical line where they can best be seen; and

(iii) When making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.

(b) A vessel restricted in her ability to maneuver, except a vessel engaged in mine clearance operations, shall exhibit:

(i) Three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;

(ii) Three shapes in a vertical line where they can best be seen. The highest and lowest of these shapes shall be balls and the middle one a diamond;

(iii) When making way through the water, masthead lights, sidelights and a sternlight, in addition to the lights prescribed in paragraph (b)(i) of this Rule 27; and

(iv) When at anchor, in addition to the lights or shapes prescribed in paragraphs (b)(i) and (ii) of this Rule 27, the light, lights or shapes prescribed in Rule 30 (33 CFR 83.30).

(c) A vessel engaged in a towing operation which severely restricts the towing vessel and her tow in their ability to deviate from their course shall, in addition to the lights or shapes

prescribed in paragraphs (b)(i) and (ii) of this Rule 27, exhibit the lights or shapes prescribed in Rule 24 (33 CFR 83.24).

(d) A vessel engaged in dredging or underwater operations, when restricted in her ability to maneuver, shall exhibit the lights and shapes prescribed in paragraphs (b)(i), (ii), and (iii) of this Rule 27 and shall in addition, when an obstruction exists, exhibit:

(i) Two all-round red lights or two balls in a vertical line to indicate the side on which the obstruction exists;

(ii) Two all-round green lights or two diamonds in a vertical line to indicate the side on which another vessel may pass; and

(iii) When at anchor, the lights or shapes prescribed by this paragraph, instead of the lights or shape prescribed in Rule 30 (33 CFR 83.30) for anchored vessels.

(e) Whenever the size of a vessel engaged in diving operations makes it impracticable to exhibit all lights and shapes prescribed in paragraph (d) of this Rule 27, the following shall instead be exhibited:

(i) Three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;

(ii) A rigid replica of the international Code flag "A" not less than 1 meter in height. Measures shall be taken to insure its all-round visibility.

(f) A vessel engaged in mine clearance operations shall, in addition to the lights prescribed for a power-driven vessel in Rule 23 (33 CFR 83.23) or to the lights or shape prescribed for a vessel at anchor in Rule 30 (33 CFR 83.30), as appropriate, exhibit three all-round green lights or three balls. One of these lights or shapes shall be exhibited near the foremast head and one at each end of the fore yard. These lights or shapes indicate that it is dangerous for another vessel to approach within 1000 meters of the mine clearance vessel.

(g) A vessel of less than 12 meters in length, except when engaged in diving operations, is not required to exhibit the lights or shapes prescribed in this Rule.

(h) The signals prescribed in this Rule are not signals of vessels in distress and requiring assistance. Such signals are contained in Annex IV to these Rules (33 CFR part 88).

(i)(i) Law enforcement vessels may display a flashing blue light when engaged in direct law enforcement or public safety activities. This light must be located so that it does not interfere with the visibility of the vessel's navigation lights.

(ii) The blue light described in this section may be displayed by law

enforcement vessels of the United States and the States and their political subdivisions.

(j)(i) Vessels engaged in government sanctioned public safety activities, and commercial vessels performing similar functions, may display an alternately flashing red and yellow light signal. This identification light signal must be located so that it does not interfere with the visibility of the vessel's navigation lights. The identification light signal may be used only as an identification signal and conveys no special privilege. Vessels using the identification light signal during public safety activities must abide by the Inland Navigation Rules, and must not presume that the light or the exigency gives them precedence or right of way.

(ii) Public safety activities include but are not limited to patrolling marine parades, regattas, or special water celebrations; traffic control; salvage; firefighting; medical assistance; assisting disabled vessels; and search and rescue.

#### **§ 83.28 (Rule 28) [Reserved].**

#### **§ 83.29 Pilot vessels (Rule 29).**

(a) A vessel engaged on pilotage duty shall exhibit:

(i) At or near the masthead, two all-round lights in a vertical line, the upper being white and the lower red; (ii) When underway, in addition, sidelights and a sternlight; and

(iii) When at anchor, in addition to the lights prescribed in paragraph (a)(i) of this Rule 29, the anchor light, lights, or shape prescribed in Rule 30 for anchored vessels.

(b) A pilot vessel when not engaged on pilotage duty shall exhibit the lights or shapes prescribed for a vessel of her length.

#### **§ 83.30 Anchored vessels and vessels aground (Rule 30).**

(a) A vessel at anchor shall exhibit where it can best be seen:

(i) In the fore part, an all-round white light or one ball; and

(ii) at or near the stern and at a lower level than the light prescribed in paragraph (a)(i) of this Rule 30, an all-round white light.

(b) A vessel of less than 50 meters in length may exhibit an all-round white light where it can best be seen instead of the lights prescribed in paragraph (a) of this Rule 30.

(c) A vessel at anchor may, and a vessel of 100 meters or more in length shall, also use the available working or equivalent lights to illuminate her decks.

(d) A vessel aground shall exhibit the lights prescribed in paragraph (a) or (b)

of this Rule 30 and in addition, if practicable, where they can best be seen:

(i) Two all-round red lights in a vertical line; and

(ii) Three balls in a vertical line.

(e) A vessel of less than 7 meters in length, when at anchor, not in or near a narrow channel, fairway, anchorage, or where other vessels normally navigate, shall not be required to exhibit the lights or shape prescribed in paragraphs (a) and (b) of this Rule 30.

(f) A vessel of less than 12 meters in length when aground shall not be required to exhibit the lights or shapes prescribed in paragraphs (d)(i) and (ii) of this Rule 30.

(g) A vessel of less than 20 meters in length, when at anchor in a special anchorage area designated by the Coast Guard, shall not be required to exhibit the anchor lights and shapes required by this Rule 30.

#### **§ 83.31 Seaplanes (Rule 31).**

Where it is impracticable for a seaplane or a WIG craft to exhibit lights and shapes of the characteristics or in the positions prescribed in the Rules of this part she shall exhibit lights and shapes as closely similar in characteristics and position as is possible.

### **Subpart D—Sound and Light Signals**

#### **§ 83.32 Definitions (Rule 32).**

(a) The word *whistle* means any sound signaling appliance capable of producing the prescribed blasts and which complies with specifications in Annex III to these Rules (33 CFR part 86).

(b) The term *short blast* means a blast of about 1 second's duration.

(c) The term *prolonged blast* means a blast of from 4 to 6 seconds' duration.

#### **§ 83.33 Equipment for sound signals (Rule 33).**

(a) A vessel of 12 meters or more in length shall be provided with a whistle, a vessel of 20 meters or more in length shall be provided with a bell in addition to a whistle, and a vessel of 100 meters or more in length shall, in addition, be provided with a gong, the tone and sound of which cannot be confused with that of the bell. The whistle, bell and gong shall comply with the specifications in Annex III to these Rules (33 CFR part 86). The bell or gong or both may be replaced by other equipment having the same respective sound characteristics, provided that manual sounding of the prescribed signals shall always be possible.

(b) A vessel of less than 12 meters in length shall not be obliged to carry the sound signaling appliances prescribed

in paragraph (a) of this Rule 33 but if she does not, she shall be provided with some other means of making an efficient sound signal.

#### **§ 83.34 Maneuvering and warning signals (Rule 34).**

(a) When power-driven vessels are in sight of one another and meeting or crossing at a distance within half a mile of each other, each vessel underway, when maneuvering as authorized or required by these Rules:

(i) Shall indicate that maneuver by the following signals on her whistle:

—One short blast to mean "I intend to leave you on my port side";

—Two short blasts to mean "I intend to leave you on my starboard side"; and

—Three short blasts to mean "I am operating astern propulsion".

(ii) Upon hearing the one or two blast signal of the other shall, if in agreement, sound the same whistle signal and take the steps necessary to effect a safe passing. If, however, from any cause, the vessel doubts the safety of the proposed maneuver, she shall sound the danger signal specified in paragraph (d) of this Rule 34 and each vessel shall take appropriate precautionary action until a safe passing agreement is made.

(b) A vessel may supplement the whistle signals prescribed in paragraph (a) of this Rule 34 by light signals:

(i) These signals shall have the following significance:

—One flash to mean "I intend to leave you on my port side";

—Two flashes to mean "I intend to leave you on my starboard side";

—Three flashes to mean "I am operating astern propulsion";

(ii) The duration of each flash shall be about 1 second; and

(iii) The light used for this signal shall, if fitted, be one all-round white or yellow light, visible at a minimum range of 2 miles, synchronized with the whistle, and shall comply with the provisions of Annex I to these Rules (33 CFR part 84).

(c) When in sight of one another:

(i) A power-driven vessel intending to overtake another power-driven vessel shall indicate her intention by the following signals on her whistle:

—One short blast to mean "I intend to overtake you on your starboard side";

—Two short blasts to mean "I intend to overtake you on your port side"; and

(ii) The power-driven vessel about to be overtaken shall, if in agreement, sound a similar sound signal. If in doubt she shall sound the danger signal prescribed in paragraph (d) of this Rule 34.

(d) When vessels in sight of one another are approaching each other and

from any cause either vessel fails to understand the intentions or actions of the other, or is in doubt whether sufficient action is being taken by the other to avoid collision, the vessel in doubt shall immediately indicate such doubt by giving at least five short and rapid blasts on the whistle. This signal may be supplemented by a light signal of at least five short and rapid flashes.

(e) A vessel nearing a bend or an area of a channel or fairway where other vessels may be obscured by an intervening obstruction shall sound one prolonged blast. This signal shall be answered with a prolonged blast by any approaching vessel that may be within hearing around the bend or behind the intervening obstruction.

(f) If whistles are fitted on a vessel at a distance apart of more than 100 meters, one whistle only shall be used for giving maneuvering and warning signals.

(g) When a power-driven vessel is leaving a dock or berth, she shall sound one prolonged blast.

(h) A vessel that reaches agreement with another vessel in a head-on, crossing, or overtaking situation, as for example, by using the radiotelephone as prescribed by the Vessel Bridge-to-Bridge Radiotelephone Act (85 Stat. 164; 33 U.S.C. 1201 *et seq.*), is not obliged to sound the whistle signals prescribed by this Rule, but may do so. If agreement is not reached, then whistle signals shall be exchanged in a timely manner and shall prevail.

#### **§ 83.35 Sound signals in restricted visibility (Rule 35).**

In or near an area of restricted visibility, whether by day or night, the signals prescribed in this Rule 35 shall be used as follows:

(a) A power-driven vessel making way through the water shall sound at intervals of not more than 2 minutes one prolonged blast.

(b) A power-driven vessel underway but stopped and making no way through the water shall sound at intervals of not more than 2 minutes two prolonged blasts in succession with an interval of about 2 seconds between them.

(c) A vessel not under command; a vessel restricted in her ability to maneuver, whether underway or at anchor; a sailing vessel; a vessel engaged in fishing, whether underway or at anchor; and a vessel engaged in towing or pushing another vessel shall, instead of the signals prescribed in paragraphs (a) or (b) of this Rule 35, sound at intervals of not more than 2 minutes, three blasts in succession; namely, one prolonged followed by two short blasts.

(d) [Reserved].

(e) A vessel towed or if more than one vessel is towed the last vessel of the tow, if manned, shall at intervals of not more than 2 minutes sound four blasts in succession; namely, one prolonged followed by three short blasts. When practicable, this signal shall be made immediately after the signal made by the towing vessel.

(f) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and shall give the signals prescribed in paragraphs (a) or (b) of this Rule 35.

(g) A vessel at anchor shall at intervals of not more than 1 minute ring the bell rapidly for about 5 seconds. In a vessel of 100 meters or more in length the bell shall be sounded in the forepart of the vessel and immediately after the ringing of the bell the gong shall be sounded rapidly for about 5 seconds in the after part of the vessel. A vessel at anchor may in addition sound three blasts in succession; namely, one short, one prolonged and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel.

(h) A vessel aground shall give the bell signal and if required the gong signal prescribed in paragraph (f) of this Rule 35 and shall, in addition, give three separate and distinct strokes on the bell immediately before and after the rapid ringing of the bell. A vessel aground may in addition sound an appropriate whistle signal.

(i) A vessel of 12 meters or more but less than 20 meters in length shall not be obliged to give the bell signals prescribed in paragraphs (g) and (h) of this Rule 35. However, if she does not, she shall make some other efficient sound signal at intervals of not more than 2 minutes.

(j) A vessel of less than 12 meters in length shall not be obliged to give the above-mentioned signals but, if she does not, shall make some other efficient sound signal at intervals of not more than 2 minutes.

(k) A pilot vessel when engaged on pilotage duty may in addition to the signals prescribed in paragraphs (a), (b), or (g) of this Rule 35 sound an identity signal consisting of four short blasts.

(l) The following vessels shall not be required to sound signals as prescribed in paragraph (g) of this Rule 35 when anchored in a special anchorage area designated by the Coast Guard:

(i) A vessel of less than 20 meters in length; and

(ii) A barge, canal boat, scow, or other nondescript craft.

#### **§ 83.36 Signals to attract attention (Rule 36).**

If necessary to attract the attention of another vessel, any vessel may make light or sound signals that cannot be mistaken for any signal authorized elsewhere in these Rules, or may direct the beam of her searchlight in the direction of the danger, in such a way as not to embarrass any vessel.

#### **§ 83.37 Distress signals (Rule 37).**

When a vessel is in distress and requires assistance she shall use or exhibit the signals described in Annex IV to these Rules (33 CFR part 88).

#### **Subpart E—Exemptions**

##### **§ 83.38 Exemptions (Rule 38).**

Any vessel or class of vessels, the keel of which is laid or which is at a corresponding stage of construction before December 24, 1980, provided that she complies with the requirements of—

(a) The Act of June 7, 1897 (30 Stat. 96), as amended (33 U.S.C. 154–232) for vessels navigating the waters subject to that statute;

(b) Section 4233 of the Revised Statutes (33 U.S.C. 301–356) for vessels navigating the waters subject to that statute;

(c) The Act of February 8, 1895 (28 Stat. 645), as amended (33 U.S.C. 241–295) for vessels navigating the waters subject to that statute; or

(d) Sections 3, 4, and 5 of the Act of April 25, 1940 (54 Stat. 163), as amended (46 U.S.C. 526b, c, and d) for motorboats navigating the waters subject to that statute; shall be exempted from compliance with the technical Annexes to these Rules as follows:

(i) The installation of lights with ranges prescribed in Rule 22, until 4 years after the effective date of the Inland Navigational Rules Act of 1980 (Pub. L. 96–591), except that vessels of less than 20 meters in length are permanently exempt;

(ii) The installation of lights with color specifications as prescribed in Annex I to these Rules (33 CFR part 84), until 4 years after the effective date of the Inland Navigational Rules Act of 1980 (Pub. L. 96–591), except that vessels of less than 20 meters in length are permanently exempt;

(iii) The repositioning of lights as a result of conversion to metric units and rounding off measurement figures, are permanently exempt; and

(iv) The horizontal repositioning of masthead lights prescribed by Annex I to these Rules (33 CFR part 84):

(1) On vessels of less than 150 meters in length, permanent exemption.

(2) On vessels of 150 meters or more in length, until 9 years after the effective

date of the Inland Navigational Rules Act of 1980 (Pub. L. 96–591).

(v) The restructuring or repositioning of all lights to meet the prescriptions of Annex I to these Rules (33 CFR part 86), until 9 years after the effective date of the Inland Navigational Rules Act of 1980 (Pub. L. 96–591);

(vi) power-driven vessels of 12 meters or more but less than 20 meters in length are permanently exempt from the provisions of Rule 23(a)(i) and (iv) (33 CFR 83.23(a)(i) and (iv) provided that, in place of these lights, the vessel exhibits a white light aft visible all round the horizon; and

(vii) the requirements for sound signal appliances prescribed in Annex III to these Rules (33 CFR part 86), until 9 years after the effective date of the Inland Navigational Rules Act of 1980 (Pub. L. 96–591).

2. Revise part 84 to read as follows:

**PART 84—ANNEX I: POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES**

Sec.

84.01 Definitions.

84.02 Vertical positioning and spacing of lights.

84.03 Horizontal positioning and spacing of lights.

84.04 Details of location of direction-indicating lights for fishing vessels, dredgers and vessels engaged in underwater operations.

84.05 Screens.

84.06 Shapes.

84.07 Color specification of lights.

84.08 Intensity of lights.

84.09 Horizontal sectors.

84.10 Vertical sectors.

84.11 Intensity of non-electric lights.

84.12 Maneuvering light.

84.13 High-speed craft.

84.14 Approval.

**Authority:** 33 U.S.C. 2071; Department of Homeland Security Delegation No. 0170.1.

**§ 84.01 Definitions.**

(a) The term *height above the hull* means height above the uppermost continuous deck. This height shall be measured from the position vertically beneath the location of the light.

(b) *High-speed craft* means a craft capable of maximum speed in meters per second (m/s) equal to or exceeding:  $3.7\sqrt{0.1667 \nabla}$ ; where  $\nabla$  = displacement corresponding to the design waterline (meters<sup>3</sup>).

**Note to paragraph (b):** The same formula expressed in pounds and knots is maximum speed in knots (kts) equal to exceeding 1.98 (lbs)  $3.7\sqrt{0.1667 \nabla}$ ; where  $\nabla$  = displacement corresponding to design waterline in pounds.

(c) The term *practical cut-off* means, for vessels 20 meters or more in length, 12.5 percent of the minimum luminous

intensity (Table 84.15(b)) corresponding to the greatest range of visibility for which the requirements of Annex I are met.

(d) The term *Rule* or *Rules* means the Inland Navigation Rules contained in sec. 2 of the Inland Navigational Rules Act of 1980 (Pub. L. 96–591, 94 Stat. 3415, 33 U.S.C. 2001, December 24, 1980) as amended.

**§ 84.02 Vertical positioning and spacing of lights.**

(a) On a power-driven vessel of 20 meters or more in length the masthead lights shall be placed as follows:

(i) The forward masthead light, or if only one masthead light is carried, then that light, at a height above the hull of not less than 5 meters, and, if the breadth of the vessel exceeds 5 meters, then at a height above the hull not less than such breadth, so however that the light need not be placed at a greater height above the hull than 8 meters;

(ii) When two masthead lights are carried the after one shall be at least 2 meters vertically higher than the forward one.

(b) The vertical separation of the masthead lights of power-driven vessels shall be such that in all normal conditions of trim the after light will be seen over and separate from the forward light at a distance of 1000 meters from the stem when viewed from water level.

(c) The masthead light of a power-driven vessel of 12 meters but less than 20 meters in length shall be placed at a height above the gunwale of not less than 2.5 meters.

(d) The masthead light, or the all-round light described in Rule 23(d) (33 CFR 83.23(d)), of a power-driven vessel of less than 12 meters in length shall be carried at least one meter higher than the sidelights.

(e) One of the two or three masthead lights prescribed for a power-driven vessel when engaged in towing or pushing another vessel shall be placed in the same position as either the forward masthead light or the after masthead light, provided that the lowest after masthead light shall be at least 2 meters vertically higher than the highest forward masthead light.

(f)(i) The masthead light or lights prescribed in Rule 23(a) shall be so placed as to be above and clear of all other lights and obstructions except as described in paragraph (f)(ii) of this section.

(ii) When it is impracticable to carry the all-round lights prescribed in Rule 27(b)(i) (33 CFR 83.27(b)(i)) below the masthead lights, they may be carried above the after masthead light(s) or vertically in between the forward

masthead light(s) and after masthead light(s), provided that in the latter case the requirement of § 84.03(d) shall be complied with.

(g) The sidelights of a power-driven vessel shall be placed at least one meter lower than the forward masthead light. They shall not be so low as to be interfered with by deck lights.

(h) [Reserved].

(i) When the Rules prescribe two or three lights to be carried in a vertical line, they shall be spaced as follows:

(i) On a vessel of 20 meters in length or more such lights shall be spaced not less than 1 meter apart, and the lowest of these lights shall, except where a towing light is required, be placed at a height of not less than 4 meters above the hull;

(ii) On a vessel of less than 20 meters in length such lights shall be spaced not less than 1 meter apart and the lowest of these lights shall, except where a towing light is required, be placed at a height of not less than 2 meters above the gunwale;

(iii) When three lights are carried they shall be equally spaced.

(j) The lower of the two all-round lights prescribed for a vessel when engaged in fishing shall be a height above the sidelights not less than twice the distance between the two vertical lights.

(k) The forward anchor light prescribed in Rule 30(a)(i) (33 CFR 83.30(a)(i)), when two are carried, shall not be less than 4.5 meters above the after one. On a vessel of 50 meters or more in length this forward anchor light shall be placed at a height or not less than 6 meters above the hull.

**§ 84.03 Horizontal positioning and spacing of lights.**

(a) Except as specified in paragraph (e) of this section, when two masthead lights are prescribed for a power-driven vessel, the horizontal distance between them must not be less than one quarter of the length of the vessel but need not be more than 50 meters. The forward light must be placed not more than one half of the length of the vessel from the stem.

(b) On a power-driven vessel of 20 meters or more in length the sidelights shall not be placed in front of the forward masthead lights. They shall be placed at or near the side of the vessel.

(c) When the lights prescribed in Rule 27(b)(i) (33 CFR 83.27(b)(i)) are placed vertically between the forward masthead light(s) and the after masthead light(s) these all-round lights shall be placed at a horizontal distance of not less than 2 meters from the fore and aft

centerline of the vessel in the athwartship direction.

(d) When only one masthead light is prescribed for a power-driven vessel, this light must be exhibited forward of amidships. For a vessel of less than 20 meters in length, the vessel shall exhibit one masthead light as far forward as is practicable.

(e) On power-driven vessels 50 meters but less than 60 meters in length operated on the Western Rivers, and those waters specified in § 89.25 of this chapter, the horizontal distance between masthead lights shall not be less than 10 meters.

**§ 84.04 Details of location of direction-indicating lights for fishing vessels, dredgers and vessels engaged in underwater operations.**

(a) The light indicating the direction of the outlying gear from a vessel engaged in fishing as prescribed in Rule 26(c)(ii) (33 CFR 83.26(c)(ii)) shall be placed at a horizontal distance of not less than 2 meters and not more than 6 meters away from the two all-round red and white lights. This light shall be placed not higher than the all-round white light prescribed in Rule 26(c)(i) (33 CFR 83.26(c)(i)) and not lower than the sidelights.

(b) The lights and shapes on a vessel engaged in dredging or underwater operations to indicate the obstructed side and/or the side on which it is safe to pass, as prescribed in Rule 27(d)(i) and (ii) (33 CFR 83.27(d)(i) and (ii)), shall be placed at the maximum practical horizontal distance, but in no case less than 2 meters, from the lights or shapes prescribed in Rule 27(b)(i) and (ii) (33 CFR 83.27(b)(i) and (ii)). In no case shall the upper of these lights or shapes be at a greater height than the lower of the three lights or shapes prescribed in Rule 27(b)(i) and (ii).

**§ 84.05 Screens.**

(a) The sidelights of vessels of 20 meters or more in length shall be fitted with mat black inboard screens and meet the requirements of § 84.09. On vessels of less than 20 meters in length, the sidelights, if necessary to meet the requirements of § 84.09, shall be fitted with mat black inboard screens. With a combined lantern, using a single vertical filament and a very narrow division between the green and red sections, external screens need not be fitted.

(b) On power-driven vessels less than 12 meters in length constructed after July 31, 1983, the masthead light, or the all-round light described in Rule 23(d) (33 CFR 83.23(d)) shall be screened to prevent direct illumination of the vessel forward of the operator's position.

**§ 84.06 Shapes.**

(a) Shapes shall be black and of the following sizes:

(i) A ball shall have a diameter of not less than 0.6 meter;

(ii) A cone shall have a base diameter of not less than 0.6 meter and a height equal to its diameter;

(iii) A diamond shape shall consist of two cones (as defined in paragraph (a)(ii) of this section) having a common base.

(b) The vertical distance between shapes shall be at least 1.5 meter.

(c) In a vessel of less than 20 meters in length shapes of lesser dimensions but commensurate with the size of the vessel may be used and the distance apart may be correspondingly reduced.

**§ 84.07 Color specification of lights.**

(a) The chromaticity of all navigation lights shall conform to the following standards, which lie within the boundaries of the area of the diagram specified for each color by the International Commission on Illumination (CIE), in the "Colors of Light Signals", which is incorporated by reference. It is Publication CIE No. 2.2. (TC-1.6), 1975, and is available from the Illumination Engineering Society, 345 East 47th Street, New York, NY 10017 and is available for inspection at the Coast Guard, Ocean Engineering Division (CG-432), 2100 2nd St. SW., Stop 7901, Washington, DC 20593-7901. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>. This incorporation by reference was approved by the Director of the Federal Register.

(b) The boundaries of the area for each color are given by indicating the corner co-ordinates, which are as follows:

(i) *White*:  
 x 0.525 0.525 0.452 0.310 0.310 0.443  
 y 0.382 0.440 0.440 0.348 0.283 0.382

(ii) *Green*:  
 x 0.028 0.009 0.300 0.203  
 y 0.385 0.723 0.511 0.356

(iii) *Red*:  
 x 0.680 0.660 0.735 0.721  
 y 0.320 0.320 0.265 0.259

(iv) *Yellow*:  
 x 0.612 0.618 0.575 0.575  
 y 0.382 0.382 0.425 0.406

**§ 84.08 Intensity of lights.**

(a) The minimum luminous intensity of lights shall be calculated by using the formula:

$$I = 3.43 \times 10^6 \times T \times D^2 \times K^{-D}$$

Where:

I is luminous intensity in candelas under service conditions,

T is threshold factor  $2 \times 10^{-7}$  lux,

D is range of visibility (luminous range) of the light in nautical miles,

K is atmospheric transmissivity. For prescribed lights the value of K shall be 0.8, corresponding to a meteorological visibility of approximately 13 nautical miles.

(b) A selection of figures derived from the formula is given in the following table:

Range of visibility (luminous range) of light in nautical miles D	Minimum luminous intensity of light in candelas for K = 0.8 I
1 .....	0.9
2 .....	4.3
3 .....	12
4 .....	27
5 .....	52
6 .....	94

**§ 84.09 Horizontal sectors.**

(a)(i) In the forward direction, sidelights as fitted on the vessel shall show the minimum required intensities. The intensities shall decrease to reach practical cut-off between 1 and 3 degrees outside the prescribed sectors.

(ii) For sternlights and masthead lights and at 22.5 degrees abaft the beam for sidelights, the minimum required intensities shall be maintained over the arc of the horizon up to 5 degrees within the limits of the sectors prescribed in Rule 21 (33 CFR 83.21). From 5 degrees within the prescribed sectors the intensity may decrease by 50 percent up to the prescribed limits; it shall decrease steadily to reach practical cut-off at not more than 5 degrees outside the prescribed sectors.

(b) All-round lights shall be so located as not to be obscured by masts, topmasts or structures within angular sectors of more than 6 degrees, except anchor lights prescribed in Rule 30 (33 CFR 83.30), which need not be placed at an impracticable height above the hull, and the all-round white light described in Rule 23(e) (33 CFR 83.23(e)), which may not be obscured at all.

(c) If it is impracticable to comply with paragraph (b) of this section by exhibiting only one all-round light, two all-round lights shall be used suitably positioned or screened to appear, as far as practicable, as one light at a minimum distance of one nautical mile.

Note to paragraph (c) of this section: Tow unscreened all-round lights that are 1.28 meters apart or less will appear as one light to the naked eye at a distance of one nautical mile.

**§ 84.10 Vertical sectors.**

(a) The vertical sectors of electric lights as fitted, with the exception of lights on sailing vessels underway and on unmanned barges, shall ensure that:

(i) At least the required minimum intensity is maintained at all angles from 5 degrees above to 5 degrees below the horizontal;

(ii) At least 60 percent of the required minimum intensity is maintained from 7.5 degrees above to 7.5 degrees below the horizontal.

(b) In the case of sailing vessels underway the vertical sectors of electric lights as fitted shall ensure that:

(i) At least the required minimum intensity is maintained at all angles from 5 degrees above to 5 degrees below the horizontal;

(ii) At least 50 percent of the required minimum intensity is maintained from 25 degrees above to 25 degrees below the horizontal.

(c) In the case of unmanned barges the minimum required intensity of electric lights as fitted shall be maintained on the horizontal.

(d) In the case of lights other than electric lights these specifications shall be met as closely as possible

**§ 84.11 Intensity of non-electric lights.**

Non-electric lights shall so far as practicable comply with the minimum intensities, as specified in the Table given in § 84.08.

**§ 84.12 Maneuvering light.**

Notwithstanding the provisions of § 84.02(f), the maneuvering light described in Rule 34(b) (33 CFR 83.34(b)) shall be placed approximately in the same fore and aft vertical plane as the masthead light or lights and, where practicable, at a minimum height of one-half meter vertically above the forward masthead light, provided that it shall be carried not less than one-half meter vertically above or below the after masthead light. On a vessel where only one masthead light is carried the maneuvering light, if fitted, shall be carried where it can best be seen, not less than one-half meter vertically apart from the masthead light.

**§ 84.13 High-speed craft.**

(a) The masthead light of high-speed craft may be placed at a height related to the breadth of the craft lower than that prescribed in § 84.02(a)(i), provided that the base angle of the isosceles triangle formed by the sidelights and masthead light, when seen in end elevation, is not less than 27°.

(b) On high-speed craft of 50 meters or more in length, the vertical separation between foremast and

mainmast light of 4.5 meters required by § 84.02(k) may be modified provided that such distance shall not be less than the value determined by the following formula:

$$y = \frac{(a + 17\Psi)C}{1000} + 2 ;$$

where:

- y is the height of the mainmast light above the foremast light in meters;
- a is the height of the foremast light above the water surface in service condition in meters;
- Ψ is the trim in service condition in degrees;
- C is the horizontal separation of masthead lights in meters.

**§ 84.14 Approval.**

The construction of lights and shapes and the installation of lights on board the vessel must satisfy the Commandant, U.S. Coast Guard.

**PART 85—ANNEX II: ADDITIONAL SIGNALS FOR FISHING VESSELS FISHING IN CLOSE PROXIMITY**

3. The authority citation for part 85 is revised to read as follows:

**Authority:** 33 U.S.C. 2071.

**§ 85.1 [Redesignated as § 85.01]**

4. Redesignate § 85.1 as § 85.01

**§ 85.01 [Removed and Reserved]**

5. Remove and reserve newly redesignated § 85.01.

**§§ 85.3 and 85.5 [Removed]**

6. Remove §§ 85.3 and 85.5.  
7. Revise part 86 to read as follows:

**PART 86—ANNEX III: TECHNICAL DETAILS OF SOUND SIGNAL APPLIANCES**

- Sec. 86.01 Whistles.
- 86.02 Bell or gong.
- 86.03 Approval. [Reserved]

**Authority:** 33 U.S.C. 2071.

**Section Contents**

**§ 86.01 Whistles**

(a) *Frequencies and range of audibility.* The fundamental frequency of the signal shall lie within the range 70–700 Hz. The range of audibility of the signal from a whistle shall be determined by those frequencies, which may include the fundamental and/or one or more higher frequencies, which lie within the range 180–700 Hz (+/- 1%) for a vessel of 20 meters or more in length, or 180–2100 Hz (+/- 1%) for a vessel of less than 20 meters in length and which provide the sound pressure levels specified in paragraph (c) of this section.

(b) *Limits of fundamental frequencies.* To ensure a wide variety of whistle characteristics, the fundamental frequency of a whistle shall be between the following limits:

- (i) 70–200 Hz, for a vessel 200 meters or more in length;
- (ii) 130–350 Hz, for a vessel 75 meters but less than 200 meters in length;
- (iii) 250–700 Hz, for a vessel less than 75 meters in length.

(c) *Sound signal intensity and range of audibility.* A whistle fitted in a vessel shall provide, in the direction of maximum intensity of the whistle and at a distance of 1 meter from it, a sound pressure level in at least one 1/3rd-octave band within the range of frequencies 180–700 Hz (+/- 1%) for a vessel of 20 meters or more in length, or 180–2100 Hz (+/- 1%) for a vessel of less than 20 meters in length, of not less than the appropriate figure given in Table C of this section.

TABLE C

Length of vessel in meters	1/3rd-octave band level at 1 meter in dB referred to 2 x 10 <sup>-5</sup> W/m <sup>2</sup>	Audibility range in nautical miles
200 or more .....	143	2
75 but less than 200 .....	138	1.5
20 but less than 75 .....	130	1
Less than 20 .....	*1 120 *2 115 *3 111	0.5

\*1 When the measured frequencies lie within the range 180–450 Hz.

\*2 When the measured frequencies lie within the range 450–800 Hz.

\*3 When the measured frequencies lie within the range 800–2100 Hz.

(d) *Directional properties.* The sound pressure level of a directional whistle shall be not more than 4 dB below the sound pressure level, specified in paragraph (c) of this section, in any direction in the horizontal plane within ±45 degrees of the forward axis. The sound pressure level of the whistle in any other direction in the horizontal plane shall not be more than 10 dB less than the sound pressure level specified for the forward axis, so that the range of audibility in any direction will be at least half the range required on the forward axis. The sound pressure level shall be measured in that 1/3rd-octave band which determines the audibility range.

(e) *Positioning of whistles.* (i) When a directional whistle is to be used as the only whistle on the vessel and is permanently installed, it shall be installed with its forward axis directed forward.

(ii) A whistle shall be placed as high as practicable on a vessel, in order to reduce interception of the emitted sound by obstructions and also to minimize hearing damage risk to personnel. The sound pressure level of the vessel's own signal at listening posts shall not exceed 110 dB(A) and so far as practicable should not exceed 100 dB(A).

(f) *Fitting of more than one whistle.* If whistles are fitted at a distance apart of more than 100 meters, they shall not be sounded simultaneously.

(g) *Combined whistle systems.* (i) A combined whistle system is a number of whistles (sound emitting sources) operated together. For the purposes of the Rules a combined whistle system is to be regarded as a single whistle.

(ii) The whistles of a combined system shall:

(1) Be located at a distance apart of not more than 100 meters,

(2) Be sounded simultaneously,

(3) Each have a fundamental frequency different from those of the others by at least 10 Hz, and

(4) Have a tonal characteristic appropriate for the length of vessel which shall be evidenced by at least two-thirds of the whistles in the combined system having fundamental frequencies falling within the limits prescribed in paragraph (b) of this section, or if there are only two whistles in the combined system, by the higher fundamental frequency falling within the limits prescribed in paragraph (b) of this section.

**Note:** If due to the presence of obstructions the sound field of a single whistle or of one of the whistles referred to in paragraph (f) of this section is likely to have a zone of greatly reduced signal level, a combined whistle system should be fitted so as to overcome this reduction.

(h) *Towing vessel whistles.* A power-driven vessel normally engaged in pushing ahead or towing alongside may, at all times, use a whistle whose characteristic falls within the limits prescribed by paragraph (b) of this section for the longest customary

composite length of the vessel and its tow.

#### § 86.02 Bell or gong.

(a) *Intensity of signal.* A bell or gong, or other device having similar sound characteristics shall produce a sound pressure level of not less than 110 dB at 1 meter.

(b) *Construction.* Bells and gongs shall be made of corrosion-resistant material and designed to give clear tone. The diameter of the mouth of the bell shall be not less than 300 mm for vessels of 20 meters or more in length. Where practicable, a power-driven bell striker is recommended to ensure constant force but manual operation shall be possible. The mass of the striker shall be not less than 3 percent of the mass of the bell.

#### § 86.03 Approval. [Reserved]

8. Revise part 87 to read as follows:

### PART 87—ANNEX IV: DISTRESS SIGNALS

Sec.

87.01 Need of assistance.

87.03 Exclusive use.

87.05 Supplemental signals.

#### § 87.01 Need of assistance.

The following signals, used or exhibited either together or separately, indicate distress and need of assistance:

(a) A gun or other explosive signal fired at intervals of about a minute.

(b) A continuous sounding with any fog-signaling apparatus;

(c) Rockets or shells, throwing red stars fired one at a time at short intervals;

(d) A signal made by any method consisting of the group . . . — — — . . . (SOS) in the Morse Code,

(e) A signal sent by radiotelephony consisting of the spoken word "Mayday";

(f) The International Code Signal of distress indicated by N.C.

(g) A signal consisting of a square flag having above or below it a ball or anything resembling a ball;

(h) Flames on the vessel (as from a burning tar barrel, oil barrel, etc.);

(i) A rocket parachute flare or a hand flare showing a red light;

(j) A smoke signal giving off orange-colored smoke;

(k) Slowly and repeatedly raising and lowering arms outstretched to each side;

(l) A distress alert by means of digital selective calling (DSC) transmitted on:

(i) VHF channel 70, or

(ii) MF/HF on the frequencies 2187.5 kHz, 8414.5 kHz, 4207.5 kHz, 6312 kHz, 12577 kHz or 16804.5 kHz;

(m) A ship-to-shore distress alert transmitted by the ship's Inmarsat or other mobile satellite service provider ship earth station;

(n) Signals transmitted by emergency position-indicating radio beacons;

(o) Signals transmitted by radiocommunication systems, including survival craft radar transponders meeting the requirements of 47 CFR 80.1095.

(p) A high intensity white light flashing at regular intervals from 50 to 70 times per minute.

#### § 87.02 Exclusive use.

The use or exhibition of any of the foregoing signals except for the purpose of indicating distress and need of assistance and the use of other signals which may be confused with any of the above signals is prohibited.

#### § 87.03 Supplemental signals.

Attention is drawn to the relevant sections of the International Code of Signals, the International Aeronautical and Maritime Search and Rescue Manual, Volume III, the International Telecommunication Union Radio Regulations and the following signals:

(a) A piece of orange-colored canvas with either a black square and circle or other appropriate symbol (for identification from the air);

(b) A dye marker.

### PART 88—ANNEX V: PILOT RULES

9. The Authority citation for part 88 continues to read as follows:

**Authority:** 33 U.S.C. 2071.

#### § 88.01 [Removed and Reserved]

10. Remove and reserve § 88.01.

#### §§ 88.03 through 88.15 [Removed]

11. Remove §§ 88.03 through 88.15.

Dated: July 23, 2012.

**Dana A. Goward,**

*Director of Marine Transportation Systems Management, U.S. Coast Guard.*

[FR Doc. 2012-18364 Filed 8-27-12; 8:45 am]

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## Federal Register

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**H.R. 1402/P.L. 112-170**

To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the House of Representatives at no net cost to the Federal Government. (Aug. 16, 2012; 126 Stat. 1303)

**H.R. 3670/P.L. 112-171**

To require the Transportation Security Administration to comply with the Uniformed

Services Employment and Reemployment Rights Act. (Aug. 16, 2012; 126 Stat. 1306)

**H.R. 4240/P.L. 112-172**

Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012 (Aug. 16, 2012; 126 Stat. 1307)

**S. 3510/P.L. 112-173**

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

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