



# FEDERAL REGISTER

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**WHEN:** Tuesday, June 11, 2013  
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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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Document Number AMS–NOP–12–0016; NOP–12–07FR]

RIN 0581–AD27

#### National Organic Program (NOP); Amendments to the National List of Allowed and Prohibited Substances (Crops and Processing)

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Department of Agriculture's (USDA's) National List of Allowed and Prohibited Substances (National List) to enact five recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on November 5, 2009, and December 2, 2011. This final rule amends the exemptions (uses) for one substance, peracetic acid, for organic crop production. This final rule also amends the exemptions for three substances used in organic handling: potassium hydroxide, silicon dioxide, and beta-carotene extract color. This final rule also removes the allowance for nonorganic annatto extract color from the National List for organic handling.

**DATES:** This rule is effective May 29, 2013, except for the amendment in instruction 4 to "silicon dioxide" in § 205.605(b) and the amendment in instruction 6 to, § 205.606(d), which are effective November 3, 2013. For more information on these effective dates, see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, Telephone: (202) 720–3252; Fax: (202) 205–7808.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 21, 2000, the Secretary established within the National Organic Program (NOP) (7 CFR part 205) the National List regulations sections 205.600 through 205.607. The National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies nonsynthetic nonagricultural, synthetic nonagricultural, and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6522), and USDA organic regulations, in section 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling must also be on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on recommendations developed by the NOSB. Since established, AMS has published multiple amendments to the National List beginning on October 31, 2003 (68 FR 61987). AMS published the most recent amendment to the National List on September 27, 2012 (77 FR 59287).

This final rule amends the National List to enact five recommendations submitted to the Secretary by the NOSB on November 5, 2009, and December 2, 2011.

##### II. Overview of Amendments

The following provides an overview of the amendments made to designated sections of the National List regulations:

#### *Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production*

This final rule amends subparagraphs (a)(6) and (i)(8) of section 205.601 by amending two listings for peracetic acid to read as follows:

(a)(6) Peracetic acid—for use in disinfecting equipment, seed, and asexually propagated planting material. Also permitted in hydrogen peroxide formulations as allowed in § 205.601(a)

at concentration of no more than 6% as indicated on the pesticide product label.

(i)(8) Peracetic acid—for use to control fire blight bacteria. Also permitted in hydrogen peroxide formulations as allowed in § 205.601(i) at concentration of no more than 6% as indicated on the pesticide product label.

After consideration of the comments received, AMS determined that the substance's use annotation should be modified from the proposed rule. This final rule differs from the text originally proposed as follows for paragraph (a)(6) (emphasis added): "Also permitted in hydrogen peroxide formulations as allowed in § 205.601(a) at concentration of no more than 6% as indicated on the pesticide product label." Similarly, the use annotation for paragraph (i)(8) was modified as follows: "Also permitted in hydrogen peroxide formulations as allowed in § 205.601(i) at concentration of no more than 6% as indicated on the pesticide product label." Additional explanation for the modification is provided in the Comments Received section of this rule.

*Section 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients In or On Processed Products Labeled as "Organic" or "Made With Organic (Specified Ingredients or Food Groups(s))."*

This final rule amends paragraph (b) of section 205.605 of the National List regulations by amending the annotations for potassium hydroxide and silicon dioxide to read as follows:

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables except when used for peeling peaches.

Silicon dioxide—Permitted as a defoamer. Allowed for other uses when organic rice hulls are not commercially available.

*Section 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients In or On Processed Products Labeled as "Organic."*

This final rule amends section 205.606 of the National List regulations by amending paragraph (d)(3) to read as follows:

Beta-carotene extract color—derived from carrots or algae (pigment CAS# 7235–40–7).

This final rule also removes annatto extract color from paragraph (d)(1) and redesignates paragraphs (d)(2) through

(d)(19) as paragraphs (d)(1) through (d)(18).

### III. Related Documents

Two notices were published regarding meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations addressed by this final rule were announced for NOSB deliberation in the following **Federal Register** notices: (1) 74 FR 46411, September 9, 2009 (peracetic acid); and (2) 76 FR 62336, October 17, 2011 (potassium hydroxide, silicon dioxide, beta-carotene extract color, and annatto extract color). The proposal to amend the annotation for four substances in this final rule, along with the removal of one substance, was published as a proposed rule in the **Federal Register** on February 5, 2013 (78 FR 8040).

### IV. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501–6522), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion or deletion from the National List. The National List petition process is implemented under section 205.607 of the USDA organic regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at <http://www.ams.usda.gov/nop>.

#### A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a

certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under section 6503 through 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA, a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 6519(f) of the OFPA, this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136(y)).

Section 6520 of the OFPA provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's final decision.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose

is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000 and small agricultural producers are defined as those having annual receipts of less than \$750,000.

U.S. sales of organic food and non-food have grown from \$1 billion in 1990 to \$31.4 billion in 2011. Sales in 2011 represented 9.5 percent growth over 2010 sales.<sup>1</sup> According to USDA, National Agricultural Statistics Service (NASS), certified organic acreage exceeded 3.5 million acres in 2011.<sup>2</sup> According to NOP's Accreditation and International Activities Division, the number of certified organic operations in the U.S. has more than doubled over time from approximately 7,000 operations in 2000 to over 17,000 operations by the end of 2011. Of these operations, over 4,900 are organic handlers, over 10,000 are organic crop producers, and over 1,900 are organic livestock producers. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

In addition, the USDA has 84 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at <http://www.ams.usda.gov/nop>. AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA.

AMS considered the economic impact of this action on small entities. The effect of this final rule would be to expand the allowed uses of peracetic acid in organic crop production. AMS concluded that expanding the allowance for peracetic acid on the National List both addresses EPA relabeling issues for products used in organic crop production and enables organic

<sup>1</sup> Organic Trade Association. 2012. Organic Industry Survey. [www.ota.com](http://www.ota.com).

<sup>2</sup> U.S. Department of Agriculture, National Agricultural Statistics Service. October 2012. 2011 Certified Organic Productions Survey. <http://usda01.library.cornell.edu/usda/current/OrganicProduction/OrganicProduction-10-04-2012.pdf>.

producers to continue using a substance for sanitation and plant disease control on organic farms. Therefore, this action will be beneficial to small agricultural service firms. This final rule also expands the use of potassium hydroxide and beta-carotene extract color in organic handling. AMS concluded that expanding the allowance for these substances on the National List provides organic handlers with more tools for processing organic products and, therefore, will be beneficial to small agricultural service firms. This final rule amends the allowance for synthetic silicon dioxide such that organic rice hulls would be required as an alternative to silicon dioxide when commercially available. The rule continues to allow the use of synthetic silicon dioxide as a defoamer. The rule also allows the continued use of synthetic silicon dioxide when organic rice hulls are not available in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic handling. This flexibility is intended to minimize the impact on small entities by allowing synthetic silicon dioxide if organic rice hulls are not commercially available, while still meeting the requirement under section 205.600(b)(1) that synthetic substances can be used only when there are no organic substitutes. This final rule also removes the allowance for one nonorganic agricultural substance, annatto extract color, in organic handling. The NOSB has determined that annatto extract color is commercially available in organic form in sufficient quantities for organic handling. AMS concluded that the economic impact of this amendment to the National List, if any, would be minimal to small agricultural service firms and may spur further development of organic annatto production.

Accordingly, AMS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

#### E. Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments

and will not have significant Tribal implications.

#### F. Comments Received on Proposed Rule AMS-NOP-12-0016; NOP-12-07PR

AMS received 43 comments on the proposed rule AMS-NOP-12-0016; NOP-12-07PR. Comments were received from organic producers and handlers, manufacturers of peracetic acid and silicon dioxide products, a nonprofit organization, an industry group, specialty food ingredient processors and distributors, specialty food products manufacturers, three trade associations, accredited certifying agents, an organic consultant, and private citizens.

Most comments favored amending the National List with the changes described in the proposed rule. Four comments stated general opposition to the allowance of any substance on the National List, but did not provide specific comments on the proposed amendments. Comments received for each substance are further described below. One comment opposed the use of genetically modified organisms (GMOs), which is outside the scope of this rulemaking action and is already prohibited under the USDA organic regulations at section 205.105(e).

Comments on the proposed amendment for beta-carotene extract color and removal of annatto extract color were supportive of the actions as proposed. Therefore, AMS is finalizing the amendment and removal of these substances, respectively, as proposed through this final rule.

#### Changes Based on Comments

##### *Peracetic Acid*

AMS received 24 comments regarding the proposed change to peracetic acid. Most comments supported a continued allowance for peracetic acid in organic crop production. A few comments indicated that peracetic acid should not be allowed, but did not provide information on alternative practices or other materials that are available as alternatives to its use.

The majority of commenters requested that AMS revise the proposed annotation for peracetic acid to include the word “also” at the beginning of the second sentence, and to cite the listings for hydrogen peroxide at sections (a)(4) and (i)(5). This amendment was suggested to clarify that peracetic acid in hydrogen peroxide formulas at concentrations less than the stated percentage will not be subject to the peracetic acid use restrictions. AMS agrees and has accepted this change, with modification. AMS has included

the word “also” and the paragraphs letters that were requested, i.e., (a) and (i). AMS did not include the subsequent number in paragraph letter (i.e., (a)(6) or (i)(8)) in order to avoid the need to renumber these listings if substances are added or removed from paragraphs (a) or (i) of section 205.601 at a later date.

In the proposed rule, AMS specifically requested comments that identified any formulated hydrogen peroxide products labeled for agricultural use that contain more than 5% peracetic acid and that may be impacted by the rulemaking action. Three comments addressed this topic. AMS received one comment from an organic mushroom producer that uses a formulated product that contains 5.6% peracetic acid. AMS also received two comments from chemical suppliers that requested that the percentage of peracetic acid be raised to 6% and 17%. In reviewing the comments, AMS considered the intent of the NOSB recommendation to restrict the amount of peracetic acid by annotation to only allow hydrogen peroxide products that contain a small amount of peracetic acid and that are subject to new labeling requirements under EPA. The intent of the NOSB was not to allow organic peroxide products containing high levels of peracetic acid up to 17%. After consideration of the comments, AMS has amended the annotation for the final rule to increase the percentage of peracetic acid included in the annotation from 5% to 6% as indicated on the pesticide product label. AMS has increased this percentage up to 6% to ensure that the formulated products currently used in the marketplace would continue to be allowed in organic production.

#### Implementation Periods

In the proposed rule, AMS requested comments that described whether product reformulation will be necessary and the timeframe that will be needed to comply with the proposed amendment for silicon dioxide at section 205.605(b) and the proposed removal of annatto extract color from section 205.606.

AMS received seven comments regarding the timeframe that organic handlers need to implement the amendment to silicon dioxide, ranging from immediately to four years. Two commenters requested an effective date of two years. One commenter requested 3–4 years, and another requested 4–6 months. One distributor of organic rice bran products in the EU did not suggest a specific timeframe, but noted that in general, its customers who use organic rice hulls as a replacement for silicon

dioxide are rather quick to implement this change. The commenter noted that adjustment may be needed to find the right replacement amount, since it may vary from application to application. One commenter indicated that they use rice hulls as a flavor carrier and anti-caking agent and indicated that they were able to implement this ingredient substitution within a few weeks. Another commenter indicated their initial substitution trials for replacing silicon dioxide with organic rice concentrate took several months to collect and approve all data and update packaging. This handler now uses the rice substitute product in all new product development, and as such, and did not request additional time for implementation. After considering the comments received, AMS has established an effective date of November 3, 2013, for this action to ensure that industry is provided advanced notification of the change to the listing for silicon dioxide. In addition, based on comments that some product testing and reformulation will be needed, AMS considers a one year period from the effective date (i.e., until November 3, 2014) as reasonable and appropriate for the industry to reformulate products. This implementation period is intended to ensure that the amendment is effectively and rationally implemented by allowing time for handlers to test organic rice hulls as a replacement for silicon dioxide, and to allow for reformulation and label changes, if needed. AMS will be conducting outreach to the industry and training for certifying agents as appropriate.

AMS received two comments addressing the time needed to implement the removal of annatto extract color from the National List. One commenter suggested 24 months from the date the final rule is released; the other suggested a minimum of two years. In consideration of the comments, AMS has established an effective date of November 3, 2013 for this removal. Further, AMS considers a one year period from the effective date (i.e., until November 3, 2014) as reasonable and appropriate for the industry to comply with this final rule. This implementation period is intended to ensure that the amendment is effectively and rationally implemented by allowing time for handlers to source organic annatto extract and to allow for ingredient substitution and label changes, if needed. AMS will be conducting outreach to the industry and training for certifying agents as appropriate.

#### Changes Requested But Not Made Peracetic Acid

One commenter indicated that it is not clear why peracetic acid should be allowed, but did not provide information on the availability of alternative practices or materials. AMS received many comments from certified organic growers indicating the need for this substance; therefore, this material should continue to be permitted in organic crop production.

One commenter supported the proposed action, but indicated that limiting the allowance of peracetic acid to fire blight is not expansive enough, and that it should be allowed without any restriction. An expanded allowance for peracetic acid was requested in the petition considered by the NOSB.<sup>3</sup> The expanded allowance requested was not recommended by the NOSB due to concerns over the impact of broad spectrum use on soil microbes. Upon review, AMS concurs with the NOSB recommendation and has not accepted the commenter's suggestion for an expanded use.<sup>4</sup>

One commenter supported the proposed action and proposed language that would add "must be followed by a fresh water rinse" to the text of the annotations for peracetic acid at paragraphs (a)(6) and (a)(8) of 205.601. However, no rationale for this addition was provided. We have not accepted this suggestion. This substance is used in organic crop production as sanitizer and fungicide and there is no requirement on the label for a freshwater rinse. Further, the added process of a freshwater rinse could diminish the effectiveness of the substance for its intended use.

One commenter indicated that AMS should not restrict the percentage and use of peracetic acid, as the higher the percentage of peracetic acid, the less costly it is to use for a farmer that needs the substance in volume. In this action, AMS has retained a stated percentage of peracetic acid in the rule, in an effort to maintain the intent of the NOSB's recommendation to continue to allow hydrogen peroxide products that contain a small amount of peracetic acid. The allowance of higher concentrations of peracetic acid for control of fire blight and for use in

disinfecting equipment, seed, and asexually propagated planting material are not impacted by this action.

#### Potassium hydroxide

AMS received eight comments regarding the proposed change to potassium hydroxide. Some commenters supported the change as proposed. Some commenters opposed any expansion of the use of this substance in organic handling, but did not include data on available alternative materials or practices for peeling peaches.

One commenter indicated that the allowance for potassium hydroxide should not be expanded since this material is toxic to human health and that its use has adverse effects on the environment. The commenter also noted that potassium hydroxide is not allowed in organic handling in the European Union or by the International Federation of Organic Agriculture Movements (IFOAM) standards. AMS has considered the comment, as well as the status of potassium hydroxide under the regulatory authority of the Food and Drug Administration (FDA). According to FDA, potassium hydroxide is generally recognized as safe (GRAS) when used as a formulation aid, a pH control agent, a processing aid or a stabilizer and thickener (21 CFR 184.1631). The FDA regulations further provide that substances generally regarded as safe in food may be used to wash or to assist in the peeling of fruits and vegetables (21 CFR 173.315). As such, AMS agrees with the NOSB recommendation that the annotation for potassium hydroxide should be revised to allow its use in *any* peach processing (e.g., frozen, canned), as there are no commercially viable alternatives for peeling peaches. In comparison to the previous allowance for this substance to peel peaches that would be individually quick frozen, there is no additional risk to the human health or the environment by expanding the allowance of potassium hydroxide for peeling peaches for other types of processing (e.g., canning). Therefore, AMS has adopted the proposed annotation for potassium hydroxide as final rule without change.

The same commenter indicated that they did not support the proposed rule because they believe there is a conflict of interest, suggesting that a contributor to the 2001 technical advisory panel (TAP) that informed the Board's recommendation on this substance worked on the petition related to the same substance ten years later in 2011. AMS does not agree that this is a conflict of interest. In its deliberations,

<sup>3</sup> The petition for peracetic acid is available on the NOP Web site at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5071775&acct=nopgeninfo>.

<sup>4</sup> NOSB Final Recommendation on Peracetic Acid (Expanded Use), November 2009. Available in Petitioned Substances Database under "P," at the NOP Web site: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5067081&acct=nopgeninfo>.

the NOSB considers a wide range of information to make a recommendation on a particular substance. This includes the petition, any technical information such as TAPs and Technical Reports, and public comments. The comment also indicated that AMS should not implement the change for potassium hydroxide because the NOSB did not request a new technical report. However, the NOSB is not required to request a new or updated technical report for all petitioned substances. In this case, existing information was available in the form of a technical report, and the report was available on the NOP Web site to the NOSB and the public in advance of the public meeting at which the NOSB recommended that potassium hydroxide be allowed in any peach peeling process.<sup>5</sup>

One commenter proposed language that would add the following additional text to the proposed annotation for potassium hydroxide (emphasis added): “Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables, except when used for peeling peaches. *In this instance, potassium hydroxide is to be permitted and allowed for any peach peeling in organic process, including freezing and canning processes.*” No explanation was provided on the need for this additional clarification. AMS believes the text, as proposed and finalized through this rule, is adequate as the substance can be used to peel peaches, regardless of the type of processing (e.g., canned, frozen).

#### Silicon Dioxide

AMS received 20 comments regarding the proposed amendment to the listing for silicon dioxide. One commenter indicated that silicon dioxide should not be allowed in any organic foods, but did not provide information on availability of alternative practices or materials.

Several comments from organic handling operations indicated that AMS should not adopt the proposed rule, since organic rice hulls do not adequately substitute for silicon dioxide in all applications, and that that organic rice hulls may substitute for the use of silicon dioxide only in limited circumstances. Commenters indicated that rice hulls do not function as a one-for-one replacement for silicon dioxide, and that substitution may compromise quality, appearance, and stability of organic products or ingredients. Commenters also indicated that silicon

dioxide is widely used in many food and beverage applications, including, dried fruit and vegetable powders, ground chili products, fish oil, soup powders, sugars, cake mixes, non-dairy creamers, salt, spices, hot chocolate, and many yeast/flour-based powdered mixes. Other commenters who supported the rule indicated that organic rice hulls were able to substitute for silicon dioxide in their applications.

AMS believes the rule, as proposed and as adopted as final rule through this action, provides the flexibility that is needed by organic handlers. As indicated in the proposed rule, the annotation for silicon dioxide allows for the continued use of silicon dioxide in handling applications if organic rice hulls do not adequately substitute for the functionality provided by silicon dioxide. The term “commercially available” is defined under section 205.2 of the USDA organic regulations as “the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan.” Linking the use of silicon dioxide by annotation to the commercial availability of organic rice hulls reflects the NOSB’s intent to permit the use of synthetic silicon dioxide when organic rice hulls do not fulfill an essential function in a system of organic handling, as determined by the certifying agent in the course of reviewing the organic plan. Inclusion of the commercial availability clause for organic rice hulls in the annotation provides the flexibility that was intended by the NOSB and does not exclude handlers from using silicon dioxide or other organic products in those applications where organic rice hulls do not provide the functionality needed. The annotation requires handlers to use organic rice hulls in place of silicon dioxide when it is available to substitute for synthetic silicon dioxide. In addition, the rule provides flexibility for handlers by allowing the continued use of silicon dioxide in those applications where organic rice hulls do not provide the functionality needed (e.g., as a defoamer). This rule implements the intent of the NOSB to limit the allowance of silicon dioxide to those functions where it is essential for the handling of organically produced agricultural products, as required by section 205.600(b)(6).

One commenter indicated concerns regarding the exclusive acceptability of organic rice hulls as the only acceptable anticaking agent because it may not

perform in the applications in which silicon dioxide has been proven effective. AMS disagrees with this interpretation. The rule does not restrict the use of other organic ingredients as a substitute for silicon dioxide in organic product formulation. Instead, the rule implements a requirement that an organic alternative must be used in place of a synthetic substance on the National List when the organic alternative is commercially available.

One commenter suggested text to replace “organic rice hulls” with “non-synthetic alternatives.” As indicated in the proposed rule, AMS has specified the one particular nonsynthetic alternative (i.e., organic rice hulls) that was evaluated by the NOSB within the annotation so that certifying agents can consistently verify that organic handlers are in compliance with the regulations. The clarification also reduces the burden on organic handlers since they would not be required to demonstrate that all nonsynthetic alternatives to synthetic silicon dioxide were considered prior to its use.

One commenter indicated that commercial availability should not apply to section 205.605 of the National List and that applying the rule to silicon dioxide would not be consistent with other materials on the list. AMS disagrees, as the listing for yeast on section 205.605(a) of the National List includes a clause regarding commercial availability. In addition, the NOSB recommendation to include commercial availability within the annotation for silicon dioxide was drafted after significant public comment to address the concerns from organic handlers that the alternative organic rice product may not function as a substitute for silicon dioxide in all applications. AMS concurs with the NOSB’s justification for inclusion of this text regarding commercial availability; therefore, we have not accepted the suggestion of the commenter to remove this text.

One commenter was concerned about the effect of the allowance of silicon dioxide in downstream products for companies that purchase ingredients that contain silicon dioxide, and the number of downstream products that may need to be reformulated based on this action. This commenter also indicated that their operation has conducted significant amounts of research and development in the past to find a way to incorporate rice hulls into their products as a viable substitute for silicon dioxide. The commenter indicated that organic rice hulls do not perform like silicon dioxide and that rice hulls do not serve the required purpose within the type of organic

<sup>5</sup> Technical Report on Potassium hydroxide. May 21, 2001. Available in Petitioned Substances Database, under “P,” at the NOP Web site: <http://www.ams.usda.gov/NOPPetitionedSubstancesDatabase>.

products that they produce. As previously stated, the new annotation would allow the continued use of silicon dioxide when organic rice hulls are not commercially available to perform an essential function in organic handling.

One commenter did not support the rule, but indicated that, if implemented, AMS should modify the proposed annotation as follows (emphasis added): “Silicon dioxide—Permitted as a defoamer. Allowed for other uses when organic rice hulls are not commercially available or do not function adequately in the product application.” AMS believes that the annotation adopted in this final rule provides the flexibility that is intended by the commenter’s suggestion. The definition of “commercially available” under section 205.2 already includes the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling. We find the phrases “fulfill an essential function” and “function adequately” to be equivalent; therefore, the suggested text has not been adopted.

One commenter noted that there are various forms of silicon dioxide, including precipitated silica, fumed silicas, aerogels, naturally occurring silicas, and mined mineral silicas. The commenter indicated that AMS should reach out to other industry groups and document other various silica types currently approved for use in the organic industry before a decision to eliminate one silica dioxide form. AMS understands that there may be multiple types of silicon dioxide in use in organic products, as the regulations do not specify Chemical Abstracts Service (CAS) numbers for different forms of silicon dioxide on the National List. As this action does not restrict the forms of synthetic silicon dioxide that are permitted for use, we have not accepted the suggestion of the commenter on this issue.

One commenter indicated that they support the use of agricultural products as a replacement for silicon dioxide, but expressed concerns about the levels of arsenic in rice products. The commenter indicated that additional testing and review should be required prior to its approval and implementation. The commenter cited data published in November 2012 by Consumer Reports of arsenic levels in rice products.<sup>6</sup> Under section 205.602(b) of the USDA organic

regulations, the use of arsenic is prohibited in the production of organic crops, including rice. AMS understands that as a result of the study cited by the commenter, the U.S. Food and Drug Administration (FDA) is currently investigating arsenic levels in foods.<sup>7</sup> As all food must comply with FDA food safety requirements, AMS did not adopt the suggestion of the commenter to require additional testing and review of organic rice hulls used in organic products prior to implementation of this rule.

One commenter proposed language that would add the following additional text to the proposed annotation for silicon dioxide: “In food products, concentration limited to 5 mg per serving.” We have not accepted the suggestion of the commenter as no explanation was provided on the need for this limitation.

Two commenters noted that the proposed text did not specify that the use of organic rice hulls is only required in products making an “organic claim,” and recommended that the annotation be amended since commercial availability does not apply to products in the “made with organic (specified ingredients or food group(s))” labeling category. AMS has not adopted this suggestion. As specified under section 205.600, synthetic substances are evaluated under the criteria specified by OFPA; in addition, processing aids and adjuvants are evaluated against additional criteria, including the availability of organic alternatives. OFPA and the USDA organic regulations do not include separate criteria for evaluation of synthetic substances used in the different labeling categories. As explained in the proposed rule, AMS specified in the annotation that the rice hulls must be organic, since the use of conventional (i.e., nonorganic) rice and rice products is not permitted in products labeled as “organic” under the USDA organic regulations. Organic or nonorganic rice hulls would be permitted as a substitute for silicon dioxide in a “made with organic (specified ingredients or food group(s))” product under section 205.301(c) of the USDA organic regulations.

One commenter, who supported the proposed action, expressed concern regarding certifying agents that may permit an overly liberal reading of the commercial availability clause. AMS believes the existing accreditation

requirements for certifying agents are sufficient for NOP to address any compliance issues with certifying agents who are not adequately implementing the USDA organic regulations, including annotations for substances on the National List.

#### G. Effective Date

This final rule reflects recommendations submitted to the Secretary by the NOSB. The substances being amended or removed from the National List were based upon petitions from the industry and were evaluated by the NOSB using criteria in the OFPA and the USDA organic regulations. Because these substances have been subject to such extensive discussion and comment, AMS believes that producers should be able to use the expanded allowances for peracetic acid, potassium hydroxide, and beta-carotene extract color in their operations as soon as possible. Further, the harvest season for organic peaches will begin in June; without this final action, potassium hydroxide can only be used to peel peaches for *frozen* product. This final rule will enable organic peach producers to commercially process and market *canned* organic peaches. It is also important for AMS to expeditiously address EPA relabeling issues for hydrogen peroxide products used in organic crop production, and this will be achieved by finalizing the amendment to peracetic acid. Accordingly, AMS finds good cause exists under 5 U.S.C. 553(d)(3) for not postponing the effective date of this rule for these three substances until 30 days after publication in the **Federal Register**.

As discussed above in Section F, the effective date for the new annotation for silicon dioxide and for removal of annatto extract color is established as November 3, 2013.

#### List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G, is amended as follows:

#### PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

<sup>6</sup> “Arsenic in Your Food,” Consumer Reports Magazine, November 2012. Available at <http://www.consumerreports.org/cro/magazine/2012/11/arsenic-in-your-food/index.htm>

<sup>7</sup> Questions & Answers: FDA’s Analysis of Arsenic in Rice and Rice Products; available at <http://www.fda.gov/Food/FoodbornenessContaminants/Metals/ucm319948.htm>

■ 2. Section 205.601 is amended by revising paragraphs (a)(6) and (i)(8) to read as follows:

**§ 205.601 Synthetic substances allowed for use in organic crop production.**

\* \* \* \* \*

(a) \* \* \*

(6) Peracetic acid—for use in disinfecting equipment, seed, and asexually propagated planting material. Also permitted in hydrogen peroxide formulations as allowed in § 205.601(a) at concentration of no more than 6% as indicated on the pesticide product label.

\* \* \* \* \*

(i) \* \* \*

(8) Peracetic acid—for use to control fire blight bacteria. Also permitted in hydrogen peroxide formulations as allowed in § 205.601(i) at concentration of no more than 6% as indicated on the pesticide product label.

\* \* \* \* \*

■ 3. In § 205.605, the entry for “potassium hydroxide” in paragraph (b) is revised to read as follows:

**§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”**

\* \* \* \* \*

(b) \* \* \*

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables except when used for peeling peaches.

\* \* \* \* \*

■ 4. In § 205.605, effective November 3, 2013, the entry for “silicon dioxide” in paragraph (b) is revised to read as follows:

**§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”**

\* \* \* \* \*

(b) \* \* \*

Silicon dioxide—Permitted as a defoamer. Allowed for other uses when organic rice hulls are not commercially available.

\* \* \* \* \*

■ 5. In § 205.606, paragraph (d)(3) is revised to read as follows:

**§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic.”**

\* \* \* \* \*

(d) \* \* \*

(3) Beta-carotene extract color—derived from carrots or algae (pigment CAS# 7235-40-7).

\* \* \* \* \*

**§ 205.606 [Amended]**

■ 6. In § 205.606, effective November 3, 2013, paragraph (d) is amended by removing paragraph (d)(1) and redesignating (d)(2) through (19) as (d)(1) through (18).

\* \* \* \* \*

Dated: May 21, 2013.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2013-12504 Filed 5-24-13; 8:45 am]

**BILLING CODE 3410-02-P**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, and 73**

[NRC-2008-0120; NRC-2010-0194]

RIN 3150-AI12

**Physical Protection of Byproduct Material**

*Correction*

In rule document 2013-5895 appearing on pages 16922-17022 in the issue of March 19, 2013, make the following correction:

**§ 37.77 [Corrected]**

On page 17017, in § 37.77, in the third column, in the first full paragraph, in the 25th line through 26th, “*RAMQC&\_SHIPMENTS&commat;nrc.gov*” should read “*RAMQC\_SHIPMENTS@nrc.gov*”.

[FR Doc. C1-2013-05895 Filed 5-24-13; 8:45 am]

**BILLING CODE 1505-01-D**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 73**

[NRC-2010-0340; NRC-2009-0163]

RIN 3150-AI64

**Physical Protection of Shipments of Irradiated Reactor Fuel**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** NUREG; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 of NUREG-0561, “Physical Protection of Shipments of Irradiated Reactor Fuel.” This revised document sets forth means, methods, and procedures that the NRC staff considers acceptable for satisfying the requirements for the physical protection of spent nuclear fuel (SNF) during transportation by road, rail, and

water; and for satisfying the requirements for background investigations of individuals granted unescorted access to SNF during transportation.

**DATES:** Revision 2 of NUREG-0561 is effective on August 19, 2013.

**ADDRESSES:** Please refer to Docket ID NRC-2010-0340 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2010-0340. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *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 Revision 2 of NUREG-0561 is ML13120A230.

- *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.

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**FOR FURTHER INFORMATION CONTACT:** R. Clyde Ragland, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7008; or email: [Clyde.Ragland@nrc.gov](mailto:Clyde.Ragland@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The NRC published a final rule in the **Federal Register** on May 20, 2013 (78 FR 29519) (RIN 3150-AI64), that amended its security regulations for the transport of irradiated reactor fuel at § 73.37 of Title 10 of the *Code of Federal Regulations*

(10 CFR), “Requirements for Physical Protection of Irradiated Reactor Fuel in Transit,” and added a new § 73.38, “Personnel Access Authorization Requirements for Irradiated Reactor Fuel in Transit.” The final rule will be effective on August 19, 2013. Documents related to the final rule can be found at <http://www.regulations.gov> by searching on Docket ID NRC–2009–0163.

Guidance to a licensee or applicant for implementation of §§ 73.37 and 73.38 is provided in Revision 2 of NUREG–0561. This NUREG is intended for use by applicants, licensees, and NRC staff. Specifically, NUREG–0561 describes methods acceptable to the NRC staff for implementing the requirements in §§ 73.37 and 73.38. Methods and solutions different from those described in the document are acceptable if they meet the requirements in §§ 73.37 and 73.38, as applicable.

Draft Revision 2 of NUREG–0561 was made available for public comment on November 3, 2010 (75 FR 67636). The NRC received comments from eight commenters during the comment period. Two of the commenters requested extensions to the comment period and one supported the proposed rule and the revisions to the NUREG. The other five commenters requested clarification and/or changes, but the requested clarifications/changes related to the proposed rule, not the NUREG. Those comments requesting changes to the rule language were also submitted during the proposed rule comment period and were addressed in the final rule.

Dated at Rockville, Maryland, this 20th day of May, 2013.

For the Nuclear Regulatory Commission.

**Michael E. Rodriguez,**

*Acting Chief, Fuel Cycle and Transportation Security Branch, Division of Security Policy, Office of Nuclear Security and Incident Response.*

[FR Doc. 2013–12600 Filed 5–24–13; 8:45 am]

**BILLING CODE 7590–01–P**

## FARM CREDIT ADMINISTRATION

**12 CFR Parts 604, 611, 612, 619, 620, 621, 622, 623, and 630**

**RIN 3052–AC65**

### Unincorporated Business Entities

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, us, or our) issues this final rule to establish a

regulatory framework for Farm Credit System (System) institutions’ use of unincorporated business entities (UBEs) organized under State law for certain business activities. A UBE includes limited partnerships (LPs), limited liability partnerships (LLPs), limited liability limited partnerships (LLLPs), limited liability companies (LLCs), and any other unincorporated business entities, such as unincorporated business trusts, organized under State law. The final rule does not apply to UBEs that one or more System institutions may establish as Rural Business Investment Companies (RBICs) pursuant to the institutions’ authority under the provisions of title VI of the Farm Security and Rural Investment Act of 2002, as amended (FSRIA), and United States Department of Agriculture (USDA) regulations implementing FSRIA. This rule does apply, however, to System institutions that organize UBEs for the express purpose of investing in RBICs.

**DATES:** This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Elna Luopa, Senior Corporate Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4056, or Wendy Laguarda, Assistant General Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

#### SUPPLEMENTARY INFORMATION:

#### I. Objectives

The objectives of this final rule are to:

- Affirm FCA’s authority to regulate and examine the System institutions’ use of UBEs, including the authority to impose any conditions FCA deems necessary and appropriate on UBE business activity, and to take enforcement action against System institutions whose business operations use UBEs;

- Prohibit System institutions from using UBEs to engage in direct lending or any activity that exceeds their authority under the Farm Credit Act of 1971, as amended (Act) or circumvents the application of cooperative principles;

- Limit the amount of a System institution’s equity investments in UBEs;

- Create a process for FCA review and approval of requests by System

institutions to organize or invest in UBEs for certain business activity;

- Establish standards for the proper and adequate disclosure and reporting of System UBE activity; and
- Ensure that the System’s use of UBEs remains transparent and free from conflicts of interest.

#### II. Background

The System’s existing investment<sup>1</sup> and incidental powers<sup>2</sup> provide the authorities for System institutions to invest in and form UBEs for certain business activity.

As business models and structures have evolved under State uniform statutes governing unincorporated, largely limited liability business structures, System institutions, with FCA approval, have been using their incidental and investment authorities to organize and invest in State-chartered UBEs to promote collaborative and expedient initiatives. Since 2009, System institutions have been organizing UBEs for the limited purposes of: (1) Making credit bids at a foreclosure sale or other court-approved auction of property collateralizing a System institution’s loans that are in default; and (2) holding and managing acquired property to minimize losses, protect the property’s value, and limit potential liability, including taking appropriate actions to limit the potential for liability under applicable environmental law and regulations.<sup>3</sup> On a case-by-case basis, FCA has approved the System’s use of other types of UBEs for certain business purposes. In view of the many advantages of UBEs for certain business activity, on September 13, 2012, FCA published a proposed rule to establish a regulatory framework for their continued use. The proposed rule, which was published for public comment for 60 days, generated nine comment letters from the public. After considering the comments, we now finalize the proposed provisions as discussed below. We note that because this final rule codifies the guidance contained in FCA Bookletter BL–057,

<sup>1</sup> Sections 1.5(15) and 3.1(13)(A) of the Act set forth the investment authorities for System banks. Sections 2.2(10) and 2.12(18) of the Act set forth the investment authorities for System associations. FCA regulations in subpart E of part 615 imbue service corporations, chartered under section 4.25 of the Act, with the same investment authorities as their organizing System banks and associations.

<sup>2</sup> Sections 1.5(3), (15) and (21); 2.2(3), (10) and (20); 2.12(3), (18) and (19); 3.1(3) and (16) of the Act.

<sup>3</sup> FCA Bookletter BL–057, Use of State-Chartered Business Entities to Hold Acquired Property (April 2, 2009).

the booklet is rescinded upon the effective date of the rule.

We believe this final rule provides a more uniform approval and oversight process for the System's ongoing use of UBEs. The rule emphasizes that incidental powers can be neither the basis for broadening or circumventing a System institution's express powers in carrying on the business of the bank or association nor used to engage in activities that are impermissible under the Act. The delivery of System credit, services and other products will still chiefly be provided by System institutions' direct use of their express powers to serve their eligible borrowers and customers. Without strong justifications to form a UBE, including one-member UBEs, System institutions will continue to conduct all aspects of their business either directly or through a service corporation authorized under section 4.25 of the Act.

In recognizing changing business practices through the System's use of UBEs, we also stress that the preservation of the System's member-focused principles remains paramount. Therefore, this rule prohibits System institutions from engaging in any activity through UBEs that circumvents the application of cooperative principles. Further, by limiting the use of one-member UBEs, the rule underscores the primarily collaborative purpose of partnerships and multi-member limited liability companies among System institutions to foster more efficient operations and improved services to member-borrowers and other customers.

Finally, to ensure that the System's use of UBEs remains transparent to the public, FCA will post on its Web site the name and business purpose of UBEs organized and controlled by one or more System institutions that are approved under this rule. Those UBEs subject to the notice provision will not be posted on our Web site.

### III. Discussion of Comment Letters and Section-by-Section Analysis of Final Rule

We received nine comment letters on the proposed UBE rule. The letters came from each of the four Farm Credit banks (CoBank, ACB; AgriBank, FCB; AgFirst Farm Credit Bank and the Farm Credit Bank of Texas); two System associations, Farm Credit Services of America, ACA and Farm Credit East, ACA; the Farm Credit Council (Council), acting on behalf of its membership; the Independent Community Bankers of America (ICBA); and one other member of the public. These letters contained a number of

constructive comments that resulted in changes to a number of provisions in the proposed rule. We made no changes to the provisions in the proposed rule that either received no comments or supportive ones unless otherwise discussed in this preamble.

#### General Issues

Four commenters generally support our efforts to set up a regulatory framework, with one of these commenters noting that the framework should not create a restrictive, cumbersome process.

In our response to comments on certain provisions of the proposed rule (see *Specific Issues* below), we have made some changes that will further streamline the notice and approval processes.

Of those supporting our effort, one commenter notes that the System should be permitted to benefit from the more formal and flexible UBE structures now available, and that their use also helps ensure that System stockholders are more protected from liability. Another commenter, while appreciating FCA's recognition of the System's authority to organize UBEs for appropriate business purposes, believes that FCA currently has an effective policy framework for UBEs and questions the purpose of the rulemaking as adding little overall value. This same commenter also asserts that the rulemaking lacks adherence to FCA's Policy Statement FCA-PS-59 on Regulatory Philosophy and suggests that FCA discontinue the rulemaking to save unnecessary effort and associated costs ultimately born by System customers and shareholders.

FCA's current practice of considering requests to organize and invest in UBEs on a case-by-case basis is no substitute for the regulatory framework that this final rule provides. Such a framework creates a more uniform oversight process for the System's continued use of UBEs; establishes standards that improve our UBE review and approval process; reinforces and preserves the System's member-focused principles; promotes collaboration between and among System institutions in their organization of UBEs by limiting the use of one-member UBEs; and brings a greater level of transparency to the System's use of UBEs.

Further, we see no inconsistencies between this rulemaking and the FCA Board's Policy Statement FCA-PS-59 on Regulatory Philosophy.<sup>4</sup> Our

<sup>4</sup> See, FCA Policy Statement FCA-PS-59, Regulatory Philosophy (July 8, 2011). This policy statement may be viewed at [www.fca.gov](http://www.fca.gov). Under

rulemaking promotes the principles set forth in FCA-PS-59 in that it supports achievement of the System's public mission, enhances the ability of System institutions to better meet the needs of agriculture and rural communities, and underscores the importance of cooperative principles for the farmer-owned Government-sponsored enterprise. The final rule reinforces FCA's obligations to ensure the System's safety and soundness by making it clear that FCA has regulatory, supervisory, oversight, examination, and enforcement authority over the System's use of UBEs. For all these reasons, we have continued this rulemaking process on the basis that the benefits of the rule outweigh its implementation costs.

In its comment letter, the Council recognizes that FCA's goal is to provide a regulatory framework for UBEs through which System institutions can obtain approval either by means of an advance notice to FCA or through an approval process. The Council encourages us to continue to identify additional circumstances in which the notice provision can be used and to streamline the approval process through guidance provided to System institutions via a booklet.

As the Council requests, we anticipate that we will be adding other kinds of UBE requests to the notice provision over time, but are unable to identify such requests beyond those we already have in the final rule. As the System gains more experience with its use of UBEs, and as we gain more comfort in such use, we foresee permitting more types of UBEs to be organized under the notice provision.

The Council also states its concern over our use of the term "cooperative principles" in the rule, suggesting instead that we reference the specific statutory requirements relating to such principles to avoid disagreement over what the term means.

Because other parties also commented on our use of the term "cooperative principles," we address the Council's comment in the *Specific Issues* section below.

In its comments, the ICBA states its belief that System institutions do not have the appropriate legal authority to form UBEs regardless of their intended merits, and that FCA has failed to provide a sound legal basis for permitting System institutions to form UBEs. The ICBA states that even FCA acknowledges this lack of express legal authority in the Act, relying instead on the System's investment authorities as

Quick Links, click on FCA Handbook, and then click on FCA Board Policy Statements.

the basis for authorizing the creation of UBEs. The ICBA recommends that FCA seek the necessary authorities from Congress rather than circumventing the Act by giving it an intentional misreading. The ICBA also states that FCA's assertion that the formation of UBEs is appropriate based on Congressional intent for System institutions to operate collaboratively so as to improve the efficiency of their products and services, is not a legal basis to allow the System to form entities not authorized by the Act.

FCA is confident in relying upon the System's incidental powers and investment authorities as sound legal bases for the System's use of UBEs. The System's incidental powers enable its institutions to organize non-corporate affiliates for authorized business operations in light of currently accepted, commercially reasonable practices used by other financial institutions. FCA has allowed the formation and use of UBEs where the use of a service corporation chartered under section 4.25 of the Act was neither commercially reasonable or practical (as in the case of UBEs formed for acquired property), nor permitted (as in the case of UBEs formed to offer crop insurance, a service that is precluded under section 4.25 of the Act). Moreover, the UBE structures enable the System to deliver certain products and services with enhanced safety and soundness via entities that address ownership rights, management, operations, assumption of liability, allocation of profits and losses, payment of taxes, and the limiting of liability.

The ICBA notes that FCA does not explain why the use of service corporations, which are permitted under the Act, fails to provide the flexibility that System institutions need and that, in allowing the formation of UBEs under a "fairly benign" application and approval process, the FCA will be discouraging the System's future use of service corporations.

We do not anticipate that System institutions will refrain from using service corporations as a result of their authority to organize UBEs. The UBE notice, approval, reporting and disclosure provisions in this rule are in many ways as comprehensive as the service corporation review and approval process and System institutions must justify the need for their use.

The ICBA also asks that we explain why we believe System institutions are permitted to purchase or own crop insurance agencies and why we are apparently allowing System institutions to engage in illegal "tying" schemes in which farmers are offered lower interest

rates on loans in exchange for purchasing System provided crop insurance. The ICBA concludes that the public deserves more transparency on this issue.

The ICBA's contention that System institutions are not authorized to provide crop insurance services through a UBE is misguided. The Act only prohibits System institutions from providing insurance services through a service corporation structure. In fact, System institutions, both individually and in coordination with one another, have long been providing hail and multi-peril crop insurance to its borrowers outside of the service corporation structure. Such services fulfill a primary purpose of the System, which is to provide sound, adequate, and constructive credit and closely related services to American farmers and ranchers and their cooperatives for efficient farming operations. As a fundamental need for crop farmers, crop insurance is a closely related service that System institutions have express authority to provide under the Act. The use of UBEs for such purpose will facilitate the provision of these important services to System borrowers and is a significant reason why service corporations are unable to provide the flexibility that System institutions need to fulfill the Act's purpose. We also note that section 4.29 of the Act and § 618.8040 of our regulations prohibit illegal tying arrangements.

Finally, the ICBA disagrees with our language that Congress intended the System to provide coordinated services or products to "rural communities," noting its belief that the Act authorizes the System to provide credit and related services only to those borrowers specified in the Act. The ICBA therefore concludes that all existing UBEs should be dissolved and/or rechartered under the guidelines and constraints of authorized service corporations.

The Act authorizes the System to provide credit and related services to eligible persons as specified in the Act. However, we note that by servicing eligible borrowers, which includes providing credit for rural homes, services closely related to agriculture, and farm-related businesses, the System does indeed improve the well-being of rural communities where the overwhelming majority of eligible borrowers live and work. Therefore, based on the sound legal basis, the benefits, and the safeguards incorporated into this final rule, we will permit the continued use of UBEs concurrent with the System's authority to organize service corporations.

One public commenter thinks the regulation is out of control and harms business, but offers no further elaboration. Without specific comments, we are unable to address this individual's concerns. However, as stated above, this rule provides adequate safeguards for the regulation and oversight of the System's use of UBEs for limited business purposes authorized under the Act.

#### *Specific Issues*

##### 1. Definitions [§ New 611.1151]

We received comments recommending that two definitions be added to § 611.1151. One commenter suggested that because the rule establishes a "necessary or expedient" standard for use of a UBE, we should define the term to avoid creating an uncertain and arbitrary standard.

FCA declines to adopt this recommendation based on the fact that this standard, used in all banking legislation, is meant to provide flexibility in a System institution's use of its incidental authorities. From our perspective, a definition would narrow the term to the institution's detriment by removing the significant discretion currently enjoyed by System institutions to decide what is necessary or expedient to their business.

This same commenter also suggests that we define the "unusual and complex" standard for establishing a UBE to hold and manage acquired loan collateral consistent with its usage in BL-057.

In the final rule, we adopt part of the commenter's suggestion by adding a definition of "unusual and complex collateral" to § 611.1151 that is consistent with its use in BL-057. This final rule now defines "unusual and complex collateral" to mean acquired property that may expose the owner to risks beyond those commonly associated with loans, including, but not limited to, acquired industrial or manufacturing properties where there is an increased risk of incurring potential environmental or other liabilities that may accrue to the owners of such properties.

This same commenter also suggests that we enhance the booklet definition to include the concept of increasing the marketability and potential value of acquired loan collateral through the use of a UBE as well as easing the sale of acquired property consistent with borrower rights requirements.

We do not agree that there is a need to enhance the definition beyond the one provided in BL-057 as the

commenter suggests. The final rule reflects the limited purposes of those UBEs formed to hold and manage acquired property: (1) Making credit bids at a foreclosure sale or other court-approved auction of property collateralizing System institutions' loans that are in default; and (2) holding and managing acquired property to minimize losses, protect the property's value, and limit potential liability, including taking appropriate actions to limit the potential for liability under applicable environmental law and regulations. We believe these limited purposes encompass the goals of not only protecting, but also enhancing the property's value to ease its eventual sale.

## 2. Assessing UBE Investments and Business Activity [New § 611.1152(b)]

One commenter notes that it is understood FCA would want to recover examination costs associated with a System institution's investments in UBEs, but states that the proposed rule fails to define a clear standard or methodology for adding such costs to current regulatory assessment requirements. The commenter notes that the proposed rule provision appears to contradict the well-defined regulatory assessment formula, imposes added costs, and possibly creates an inequity by subjecting institutions with UBEs to double assessments—that is, one on the equity investment included in total assets and one on the UBE itself. The commenter asks that FCA establish a specific formula for assessing UBEs.

FCA never intended to change the assessment formula set forth in § 607.3. Consequently, in response to the commenter's concern, we have modified the language in § 611.1152(b) to cite only to section 5.15 of the Act. The cost of regulating and examining System institutions' activities involving UBEs will be taken into account under FCA's current assessment formula.

## 3. General Restrictions and Prohibitions on the Use of UBEs [New § 611.1153]

### a. Authorized Business Activity Must Be Necessary or Expedient, as Determined by the FCA, to the Business of One or More System Institutions Owning the UBE. [New § 611.1153(a)(1)]

Two commenters object to the language that would allow FCA to determine what is necessary or expedient to the institution's business, stating that such language places FCA in a management role more aptly reserved for a System institution's board of directors or management team. The commenters state that FCA's role should

be limited to evaluating a System institution's rationale for forming a UBE and requesting any other information deemed necessary.

In response to the commenter's objection, we have decided to remove the language "as determined by FCA." We note, however, that in doing so, FCA will evaluate an institution's assessment that the UBE is necessary or expedient to the institution's business in our review process under the notice or approval provision. To this end, we expect a board of directors to substantiate its statement that the UBE meets this criterion in its submission to FCA.

### b. Circumvention of Cooperative Principles [new § 611.1153(b)]

We received comments from two commenters and the Council on this provision, prohibiting System institutions from using UBEs to engage in activities that would circumvent the application of cooperative principles. One commenter believes that this limitation could restrict potential future innovation that might further enhance the System's ability to effectively serve its mission to agriculture and rural America. Another commenter states that since FCA retains the right to approve or otherwise regulate any and all investments by System institutions in a UBE, the limitation is unnecessary to protect the System's integrity or its cooperative principles.

We do not agree with the commenters that this restriction unnecessarily limits a System institution's ability to be innovative. This rule provides greater flexibility for System institutions to collaborate on initiatives to better serve agriculture and rural America through innovative and diverse business structures while respecting the fact UBEs must operate within the Act and regulation and cannot have any greater authority than that of System institutions. Moreover, the prohibitions on UBEs making direct loans or engaging in any other activities that circumvent cooperative principles ensure that these primary functions remain within the corporate charters of System institutions and the stated objectives of the farmer-owned Farm Credit System as set forth in section 1.1 of the Act.

Another commenter objects to FCA's implication that System institutions would engage in activities that might circumvent the requirements of the Act. The commenter believes it would be preferable for FCA to focus on the statutory requirements relating to cooperative principles rather than attempt to define the term by regulation.

This same commenter adds that the application of cooperative principles goes beyond and has little to do with established statutory requirements and, instead, ". . . encompasses a way of doing business that is the responsibility of the membership, directors, and management to determine how best to implement for their individual institution." To avoid creating confusion with clear legal requirements and dictating how members should run their cooperatives, the commenter recommends that we drop the term "cooperative principles" and replace it with a more technically precise term such as "circumvention of the Act's requirements." Another commenter suggests that the term "cooperative principles" make specific reference to the specific statutory requirements for the System's cooperative structure by citing to the Act's provisions on stock ownership, patronage, and borrower and voting rights.

After considering the foregoing comments, FCA has decided not to remove this restriction from the final rule. We agree, in part, with one of the commenters that certain cooperative principles may go beyond the statutory and regulatory provisions relating to the System's cooperative structure to also encompass "a way of doing business" that is in some measure left to an institution's member-owners. FCA Board Policy Statement FCA-PS-80 on cooperative operating philosophy underscores that cooperative principles are an integral part of the System's cooperative structure under the Act and therefore requires an institution to conduct its business with this member-focused perspective in mind.<sup>5</sup> For this reason, we are removing the "as determined by FCA" language from this provision in the final rule but point out that in our review process under the notice and approval provisions, FCA must be satisfied that an institution has adequately demonstrated that its use of a UBE will not contravene cooperative principles. Therefore, we expect an institution's board to substantiate in its statement to FCA that the UBE's service, function, or activity will not circumvent cooperative principles.

<sup>5</sup> See, section 1.1(a) of the Act and FCA Policy Statement FCA-PS-80, Cooperative Operating Philosophy—Serving the Members of Farm Credit System Institutions (October 14, 2010). This policy statement may be viewed at [www.fca.gov](http://www.fca.gov). Under Quick Links, click on FCA Handbook, and then click on FCA Board Policy Statements. Sections 611.350, 615.5220, and 615.5230 of our regulations also address cooperative principles.

c. Transparency and the Avoidance of Conflicts of Interest [new § 611.1153(c)]

The ICBA and one other commenter offered suggestions on this provision requiring that the business between the System institution and the UBE remain transparent and free from conflicts of interest. One commenter indicates support of the need to maintain a clear separation of UBEs from their parent organizations, but is concerned that the term “commingling” could be misconstrued and inappropriately applied. The commenter provides the example of an institution and its UBE sharing the same physical resources, which might be construed as an improper “commingling,” even though their internal controls maintain appropriate levels of separation. The commenter adds that unless commingling results in a piercing of the corporate veil or a clear conflict of interest, the proper sharing of resources should not be restricted so that existing resources can be fully leveraged.

The restriction in the proposed rule states that business transactions, accounts, and records of the UBE are not to be commingled with those of the System institution. We want to clarify that this restriction does not prevent the use of the same physical resources as long as the transactions, records and accounts are separately accounted for and adequate internal controls are in place to ensure such separation. For these reasons, we see no need to change the language in the final rule.

The ICBA supports all transparency requirements but believes they should include all UBEs and allow for the public review of UBE documents to ensure that laws are being followed.

We note that the System’s use of UBEs will be made transparent to the public under FCA’s plan to post on its Web site the name and business purpose of UBEs organized and controlled by one or more System institutions that are approved under the rule. We do not agree with the ICBA’s suggestion that the transparency provision should allow for public review of UBE documents to ensure a UBE’s compliance with the law. It is FCA’s responsibility rather than that of the general public to determine that a System institution has properly established a UBE and is complying with applicable law and regulation.

d. Prohibition on UBE Subsidiaries [new § 611.1153(f)]

Two parties commented on the prohibition on creating UBE subsidiaries. One commenter stated that the prohibition removes needed flexibility to manage acquired property

associated with syndicated, participated, or other loan transactions where it may be more workable for each investor’s pro rata interest in the acquired property to be held in a separate subsidiary of the parent UBE. According to the commenter, such an arrangement would avoid difficult negotiations relating to management agreements and ownership structures. Since ownership interests in the UBEs would be clear and unambiguous, the commenter believes that FCA’s examination process in looking at this subsidiary structure would not be difficult. The second commenter generally supports our limitation on use of multi-layered UBEs but urges us to consider comments from others in dealing with acquired property associated with syndicated loans and other complex multi-owner situations.

We are persuaded by the comments that we should allow some flexibility in the final rule for those acquired property UBEs involving both System and non-System lenders. Therefore, we are permitting an exception to the prohibition on UBE subsidiaries by allowing System institutions to establish UBEs as subsidiaries of an acquired property UBE to hold each investor’s pro rata interests in acquired property provided that the loan collateral at issue involves multi-lender transactions that include System and non-System institutions. This exception is not available when the acquired property is owned solely by System institutions. In those instances, System institutions can effectively work through the partnership or management agreements to establish their pro rata interests within the single UBE while still protecting their limited liability.

e. Limit on Amount of Equity Investments in UBEs [new § 611.1153(h)]

We received a comment from the ICBA and one other comment on this provision, which limits a System institution’s aggregate amount of equity investments in UBEs to one percent of its total loans outstanding, calculated at the time of each investment. One commenter remarked that the limit is too small, especially for smaller institutions, and will result in unnecessary requests for exemptions.<sup>6</sup>

We decline to increase the aggregate limit based on our belief that small associations should take a more cautious approach in determining whether to establish a UBE for certain

business activity. Moreover, given the small number of UBEs currently affiliated with System institutions, we do not believe this limit will result in an overwhelming number of requests for exceptions.

The ICBA does not agree that FCA should be able to make exceptions to restrictions listed in the proposed rule, stating that such exceptions create the appearance that we would favor some institutions over others. The ICBA suggests that FCA go through a public comment process to make any additional changes to the methodologies in the regulations.

As proposed, this final rule allows only two instances where FCA is able to make exceptions to the restrictions on a case-by-case basis. The first exception is in this provision § 611.1153(h) at issue. It allows FCA to set either a higher or lower limit than the one-percent aggregate equity investment limit based on safety and soundness or other relevant concerns. The second exception is in § 611.1153(i), in which System institutions are prohibited from making an equity investment in a third-party UBE except as FCA may authorize under § 615.5140(e) for de minimis and passive investments.<sup>7</sup> We do not agree with the ICBA that these two exceptions create an appearance that we are favoring some System institutions over others. As an arm’s-length regulator, we must carry out our oversight responsibilities with impartiality, providing equal access and consideration to all System institutions. We would determine such exceptions according to these principles. Our final rule will retain the foregoing exceptions, which we deem necessary for safety and soundness concerns.

f. Limitation on Non-System Equity Investments [new § 611.1153(j)]

Four respondents provided comments on this provision, which limits non-System investment in a System-owned UBE to 20 percent of total equity. One commenter thought the limit could be an issue for a loan syndicated to non-System lenders, which, if the loan became distressed, might force a System institution to buy out a commercial bank’s interest.

At the outset, we note that this 20-percent outside investment limitation applies only to those UBEs organized to provide limited services integral to a System institution’s daily internal operations, such as fixed asset, electronic transaction, or trustee

<sup>6</sup> This limit does not apply to a System institution’s equity investment in an acquired property UBE.

<sup>7</sup> Such requests will be considered on a case-by-case basis outside of this final rule in accordance with the requirements of § 615.5140(e).

services. Further, the UBE operating agreement would address the process for an outside investor to extricate itself from the UBE based on financial or other reasons.

Another commenter contends that a System UBE should be able to attract and leverage outside ownership as long as the System institution controls it and FCA retains full authority over it. This same commenter suggests increasing outside ownership to 50 percent. A third commenter asks FCA to reexamine the limitation as well.<sup>8</sup>

Contrary to the suggestions of these commenters, we see no justification for expanding outside ownership beyond the 20 percent of total equity that is permitted for those UBEs performing limited services considered integral to a System institution's daily internal operations. Were we to increase outside ownership to 50 percent, as one commenter suggests, the System would no longer be a majority owner. Given that the outside investor authority for service corporations (where non-System ownership is also limited to 20 percent of total equity) has yet to be exercised by System institutions in the 12 years that they have had this regulatory authority, we see no need to increase the 20-percent cap in this final rule.

In contrast to the other commenters, the ICBA opposes allowing non-System persons or entities to invest in a System-controlled UBE, arguing that the Act does not authorize outside investments in service corporations or in UBEs. It notes that outside investments violate cooperative principles, would be unmanageable for FCA to regulate and examine, pose safety and soundness risks, and raise questions on voting rights due to the non-member status of third-party investors.

The FCA has permitted this same level of non-System equity investment in System-owned service corporations under FCA regulations (see § 611.1135(b)) based on our determination that such a minority level would not jeopardize the cooperative structure of a System institution or its associated principles, be unmanageable to regulate or examine, or negatively affect the safety and soundness of the institution. Nor do we agree with the ICBA's contention that this exception would jeopardize cooperative principles or create a safety and soundness risk. With regard to voting rights for non-System investors, we note that the partnership or membership agreement would control how decisions are made

within the UBE for the majority and minority equity holders. We emphasize that the voting rights established within the UBE will have no effect on the voting rights of the member/borrowers of the System institution itself. For all the foregoing reasons, FCA has retained this limited outside investment authority as proposed.

#### 4. Notice of Equity Investments in UBEs [New § 611.1154]

FCA received 11 comments on various provisions of § 611.1154. The ICBA opposes the notice provision entirely and believes all requests for UBE formations should be made through the approval provision. The ICBA adds that allowing some System institutions to provide notice only is discriminatory in that it favors the large institutions, serves no legitimate purpose, and appears to violate cooperative principles.

FCA does not believe the notice provision favors the large System institutions, serves no legitimate purpose, or violates cooperative principles. The eligibility for providing notice of a UBE formation versus submitting an approval application is based on the type of business activity, function or service being conducted in the UBE, all of which has no bearing on the size of a System institution. A number of System institutions, differing in size, have been using UBEs for acquired property and to provide hail and multi-peril crop insurance without jeopardizing cooperative principles or otherwise putting the institutions at risk. Based on the experience gained by the System in using UBEs for such purposes, and FCA's consequent experience in overseeing such UBEs, we see no reason for such UBEs to be subject to an approval process. The notice provision serves the purpose of avoiding unnecessary administrative burdens and costs and has therefore been retained in this final rule.

We summarize the remaining comments under the relevant sections that follow.

##### a. Applicability [New § 611.1154(a)]

The proposed rule included a notice provision available only to System institutions with a Financial Institution Rating System (FIRS) rating of 1 or 2. Those with lower FIRS ratings would have been required to request FCA approval of the proposed UBE under § 611.1155. One commenter remarks that requiring prior approval for an institution to use a UBE to hold and manage acquired property increases the time and expense needed to manage the assets. The commenter references a

statement in BL-057 that it is generally inappropriate for FCA to provide prior approval or concurrence regarding decisions on use of UBEs for acquired property purposes.

We note that System institutions, regardless of FIRS ratings, have organized UBEs to hold and manage acquired property since the booklet's issuance in 2009 without negative consequences. Therefore, FCA agrees to remove the FIRS rating restriction altogether from the notice provision based on our more considered belief that such a restriction is unnecessary to ensure that such UBEs will not put an institution at further risk. We retain the requirement, however, that System institutions notify FCA of their intent to form an acquired property UBE. This notice allows us to keep track of such UBEs and to ensure that their use will help the institution manage its acquired property.

##### b. Notice Requirements [New § 611.1154(b)]

Our proposed rule requires System institutions to provide notice to FCA 20 business days in advance of making an equity investment in a UBE. Five commenters said that 20 business days was excessive. These commenters stated that because decisions to hold acquired property often occur within a relatively short span of time after commencing a collection/foreclosure action, requiring at least 20 business days for an advance notice is inconsistent with the need to reach a quick resolution. One commenter suggests a standard that is "as soon as is reasonably practicable," but not less than 5 business days prior to formation. Other commenters note that the 20 business days advance notice is too restrictive and that System institutions need to be able to respond in a timely manner to decisions made by lender groups and borrowers relating to a collection of large syndicated loans.

FCA has considered the foregoing concerns related to the 20 business days advance notice and, consequently, has adopted a 10 business day advance notice requirement in this final rule. We believe that a 10 business-day review is a fair compromise between the proposed 20 business-day review and the requested 5-day review, which is not sufficient for FCA purposes. The notice provision allows us time to review the documentation provided by the System institution. Should we find noncompliance issues or safety and soundness concerns, FCA will notify the institution before the notice period ends that it must delay the UBE's formation and submit an application for approval under § 611.1155. We are adding this

<sup>8</sup>FCA notes that this restriction does not apply to acquired property UBEs that often involve System and non-System lenders.

requirement to the notice provision as a counterbalance to our removing the FIRS restriction and decreasing by half the number of business days required for the notice. This requirement is now found at § 611.1154(d).

c. A Certified Resolution of the System Institution's Board of Directors [New § 611.1154(b)(3)]

We received several comments on the requirement to submit a certified board resolution under the notice provision. One commenter believes that the board resolution requirement is too prescriptive and inappropriately dictates how boards must conduct their oversight responsibilities. The commenter adds that it has long been an acceptable governance standard for the board of directors to adopt a policy authorizing management to conduct certain activities within established limits, controls, and reporting requirements. Such a practice, according to the commenter, would ensure timely and appropriate use of authorities when management must act quickly. The commenter suggests that FCA allow System institutions to follow this business practice and use a policy-based approach.

FCA strongly believes that the System's authority to organize UBEs rises to the level of board action. As the body that is ultimately held accountable for an institution's actions and outcomes, we believe that it is both appropriate and necessary for System boards to approve the investment in, and business activity of, a UBE. Moreover, we do not believe that a board policy in this area is an adequate substitute for this rule. While a policy-based approach may be appropriate for administering a program, it is not relevant to the formation of a UBE, which requires FCA's advance review or approval. However, we encourage System boards to develop policies on the use of UBEs that might include reporting requirements on UBE activity to the board and other internal controls ensuring that UBE activity remains in compliance with the requirements of this rule.

Another commenter is concerned with the level of board involvement in forming UBEs when they are used to hold and manage acquired property, stating that requiring certified board resolutions for every investment in an acquired property UBE is burdensome and may cause delays in the collection/foreclosure process.

We understand that requiring a certified board resolution each time an institution organizes a UBE to hold and manage acquired property in which

unusual and complex collateral is involved could become burdensome and possibly cause disruptions in the collection and foreclosure process. To ease these concerns, this final rule allows the board of directors to adopt a blanket certified resolution that would cover all acquired property UBEs that the institution may form. This "blanket resolution," as we refer to it, must be filed with FCA with each advance notice of an acquired property UBE. This requirement is now found at § 611.1154(b)(3). We note that the use of this blanket resolution is applicable only for the acquired property UBEs. Notices of hail and multi-peril crop insurance UBEs, and those UBEs added to the notice provision by FCA in the future, will still require a separate and timely certified board resolution.

d. A Statement From the Board of Directors [new § 611.1154(b)(5)]

Three commenters remarked that requiring a separate board-adopted statement is inefficient, ineffective, unnecessary, and bureaucratic and that FCA should allow the statement to be addressed within the context of a board adopted policy instead. One commenter believes that the restrictions and prohibitions required as part of the board statement in paragraph (b)(5)(vi) unnecessarily restrict potential future innovation that could further enhance a System institution's ability to effectively serve its mission to agriculture and rural America and is simply not necessary to protect the System's integrity or its cooperative principles.

As with the board resolution, FCA believes that it is both appropriate and necessary for the board to affirm that the UBE will operate in accordance with certain requirements and restrictions in the rule. This statement provides that a UBE cannot be used to make direct loans, perform any functions, services or engage in any activities that the System institution itself is not authorized to carry out under the Act and regulations or to exceed the stated purpose of the UBE as set forth in its articles of formation. The statement also provides board support that the UBE is necessary or expedient to the institution's business and will operate with transparency, free from conflicts of interest, and in accordance with applicable law.

Also, we are perplexed by the comment that § 611.1154(b)(5)(vi) unnecessarily restricts System institutions' potential future innovation. This provision provides that UBEs will not engage in direct lending or exceed their stated purpose. These directives parallel the limits on service

corporations formed under section 4.25 of the Act. As previously discussed, this rule gives System institutions yet another means to conduct certain business activity through expedient and efficient business structures while retaining the primary functions of a System institution within its federal charter, subject to all statutory and regulatory restrictions. The System's desire to innovate is necessarily restricted by applicable law, regulation, and safety and soundness concerns.

Although we are retaining the board statement, we clarify in the final rule that a separate board action is not required for the statement. By approving and adopting its resolution, the board will also be approving the board statement included with the certified resolution.

Finally, we note that the regulation does not require a board statement for acquired property UBEs that are filed under the notice provision. Under the notice provision, the board statement is required only for those UBEs organized to provide hail or multi-peril crop insurance or other functions, services, or activities that FCA may allow to be filed under the notice provision in the future (see § 611.1154(b)(5)).

In the final rule, we are moving the board statement requirement from § 611.1154(b)(5) to § 611.1154(b)(4) so that the certified board resolution and the board statement appear in sequence. As a result of this technical change, the requirement for a letter from the funding bank approving the institution's equity investment in the UBE is being moved to § 611.1154(b)(5).

e. Funding Bank Approval Letter [new § 611.1154(b)(4)]

In the final rule, we are moving the requirement for the funding bank's approval of the equity investment to § 611.1154(b)(5). Moreover, to alleviate the need for the funding bank to approve each association's equity investment in a UBE organized to hold and manage unusual or complex collateral associated with loans, we are allowing a funding bank to provide a blanket approval letter for all such UBEs that its district associations may invest in or organize.

f. Supplementation or Omission of Information [new § 611.1154(c) and § 611.1155(b)]

We received one comment that this provision creates ambiguity and uncertainty as to what information a System institution should provide in order to establish or invest in UBEs.

The requirements in both the notice and approval provisions clearly state

what we expect System institutions to provide. However, because we cannot anticipate all the reasons for UBE use, this provision gives FCA the flexibility to ask for additional information on unusual or complex applications or to permit the omission of certain information on less complex applications. Therefore, we have retained this provision in the final rule, which provides needed flexibility affecting the clarity of the notice or approval process.

#### 5. Approval of Equity Investments in UBEs [new § 611.1155]

##### a. Request [new § 611.1155(a)]

Two commenters claim that the proposed rule fails to require timely action or response by FCA on any request. The commenters believe that FCA should hold itself to a reasonable timeframe to approve or deny any request, consistent with the 60-day requirement for merger applications.

Although we decline to add a provision in the final rule requiring FCA action by a certain time, it is FCA's practice to act within 60 business days of the receipt of a complete approval request whenever feasible. We note that the 60-day requirement for action on mergers is a statutory requirement.<sup>9</sup> There is no statutory time limit on most approval requests coming before the Agency.

##### b. A Certified Resolution of the System Institution's Board of Directors [new § 611.1155(a)(4)]

We received the same comments on the requirement for a certified board resolution under the approval provision as we did under the notice provision. We refer you to § 611.1154(b)(3) above for a discussion of these comments. For all the reasons stated in our discussion of the comments under the Notice provision, we have retained the requirement for a certified board resolution under this approval provision.

##### c. A Statement From the Board of Directors [new § 611.1155 (a)(6)].

Similarly, comments on the board statement, which is required under both the notice and approval provisions, were summarized under the notice provision in § 611.1154(b)(5). No new or additional comments were made on the board statement in this section.

As we explained in our response to the comments on the notice provision in proposed § 611.1154(b)(5), we are retaining the board statement requirement but clarify that we are not requiring a separate board action for the statement. In adopting its resolution, the board also will be approving the board statement included with the certified resolution.

In the final rule, we are combining the certified board resolution and board statement requirements into § 611.1155(a)(4). As a result of this technical change, the requirement for a letter from the funding bank approving the institution's equity investment in the UBE is being moved to § 611.1155(a)(5).

##### d. Denial of a Request [new § 611.1155(c)]

One commenter believes that FCA should establish clear and transparent regulatory standards for denial of a bona fide request. Otherwise, a denial could be arbitrary and capricious and subject to the personal views of FCA staff.

With respect to establishing standards for denial of a request, we have not included such standards in the final rule because we are unable to anticipate all the reasons for denying a request. By law, FCA is obligated to act in a reasoned, impartial, and equitable manner in its approval and denial actions. Should a System institution believe that we failed to do so, our decision may be judicially challenged based on the arbitrary and capricious standard. Therefore, should we deny a request, our reasons for denial will be made clear after careful, impartial and judicious consideration.

##### 6. Ongoing Requirements [new § 611.1156]

One commenter suggests that we replace the word "interest" in § 611.1156(a) with the word "investment." We decline to make the change because the word "interest" is broader in meaning and connotes not only the institution's equity investment in the UBE, but also interests such as that of preserving the operations of the UBE's ongoing business, maintaining good customer relationships, and avoiding reputational risk.

##### a. Divestiture [new § 611.1156(b)-(d)]

Three commenters remarked on the divestiture provisions. One commenter believes that the provisions are redundant and confusing and suggests that we combine them into one standard. This commenter also is concerned that FCA's authority to require divestiture without a suitable

cause should be restricted and suggests that FCA establish standards for a divestiture order. Another commenter, remarking on the same subject, is concerned that § 611.1156(c) allows FCA to require divestiture at any time without any triggering event, thus resulting in a complete loss to the institution. The commenter recommends that we delete paragraph (c) from the rule.

In response to these comments, we have deleted some and combined other paragraphs of § 611.1156(b) in this final rule to eliminate the redundancy in the divestiture provisions. However, we have retained the provision that allows FCA to direct a System institution to divest of its investment in a UBE. We note that this provision mirrors the discretion retained by FCA for those UBEs that we have approved on a case-by-case basis. Such approvals are subject to a condition giving FCA the right to order a divestiture without a pre-determined triggering event. As we are unable to anticipate all the conditions that might trigger the need for divestiture, we retain this authority in the final rule.

The ICBA agrees with FCA that a System institution must divest its ownership interest or withdraw as a member or partner from any UBE if a non-System entity takes control of the UBE. However, the ICBA comments that the divestiture should take place within a period not to exceed 6 months with a right to appeal for an extension of not more than 3 months should more time be needed. Finally, the ICBA adds that such a time limit should apply to divestitures of all UBEs, including those that have no non-System ownership.

We understand the ICBA's timeliness concerns. However, we decline to set a specific time limit for divestiture given that investments in UBEs are generally not liquid or marketable. Moreover, there may be legal or practical impediments to divesting within a particular timeframe depending on the nature and ownership structure of the UBE. Although we are not imposing a time requirement in the regulation, we expect System institutions to act expeditiously and may specify a time limit when FCA directs divestiture.

##### 7. Grandfather Provision [new § 611.1158]

##### a. Scope [new § 611.1158(a)]

We received several comments on the scope of the provision that allows those existing UBEs that received specific, written approval by the FCA prior to the effective date of this final rule, as well as existing acquired property UBEs, to

<sup>9</sup> This 60-day statutory time limit in section 7.11 of the Act also applies to termination of a System institution's status as a member of the System, dissolutions, and transfer of lending authority. In the latter case, all transfers of lending authority from banks to federal land bank associations and agricultural credit associations have occurred.

be grandfathered under the rule. Two commenters expressed support for this provision and one commenter asks that FCA confirm that all existing UBEs are effectively grandfathered and may continue current or intended business activities.

In response to the request that FCA confirm that all existing UBEs are grandfathered, we specifically stated in the proposed rule, and retain the same language in the final rule, that “those UBE formations or equity investments that received specific, written approval by FCA prior to the effective date of this regulation” are grandfathered as well as those UBEs organized to acquire and manage unusual or complex collateral associated with loans. If a System institution is unsure as to whether a UBE’s formation or investment in a UBE meets this criterion, it should contact FCA for confirmation.

The ICBA, on the other hand, opposes the grandfathering of existing UBEs, stating that such a practice adds greater risk to the System and undermines safety and soundness standards.

We do not agree with the ICBA’s comments opposing the grandfather provision. All grandfathered UBEs were subject to a careful review process, including a review of the System institution’s safety and soundness. To subject them anew to the notice or approval requirements of the rule would violate the principles of due process. We note that, although exempt from the notice and approval provisions in the rule, grandfathered UBEs will remain subject to their conditions of approval and will be subject to the ongoing and disclosure and reporting requirements in the rule as set forth in § 611.1158(b)(2).

#### b. System Institutions’ Obligations [new § 611.1158(b)]

Two commenters asked the FCA to adopt a materiality threshold on the degree of change that would trigger an approval request for a grandfathered UBE. One commenter believes it is unreasonable to think that business activity, ownership interests in, or control of any UBE will remain static over time and that any change or expansion to these attributes requiring an advance notice to FCA would create a burdensome and restrictive process. The same commenter states that the 20 business days advance notice is burdensome, restrictive, and may be impossible to achieve.

One commenter asks that FCA create a process for System institutions to invest, divest and/or reinvest in grandfathered UBEs.

In response to these comments, we have modified § 611.1158(b)(3) in the final rule to change the advance notice requirement from 20 business days to 10 business days consistent with our change to the advance notice provision in § 611.1154. Also, in response to the request for more clarity on what changes or expansions would trigger an advance notice, the final rule provides that an advance notice is required for any of the following occurrences in a grandfathered UBE: (1) A change or expansion of the authorized business activity, service or function of the UBE; (2) an introduction of non-System ownership to the UBE or an increase in the current level of non-System ownership in the UBE, to the extent such ownership is authorized under the final rule; or, (3) a change in control of the UBE as we define the term “control” in the rule. The purpose of the advance notice is to inform FCA of a change or expansion that meets one or more of the foregoing criteria now included in this final rule. If FCA determines, upon review, that the proposed change or expansion is material, we will notify the System institution before the end of the advance notice period that it may not proceed with the proposed change or expansion before submitting a request for approval under § 611.1155. We have added this clarifying language to the final rule in § 611.1158(b)(4).

In response to the commenter’s request that we provide a process in the rule for System institutions wanting to invest, divest, or reinvest in grandfathered UBEs, we have modified § 611.1158 to include such a process in § 611.1158(c). A System institution asking to invest for the first time in a grandfathered UBE or an institution that had divested its previous equity investment and wants to reinvest in a grandfathered UBE must follow either the notice provision in § 611.1154 or the approval provision in § 611.1155, depending on the UBE’s business purpose. Not all requirements will apply under either the notice or approval provisions to the requesting System institution because the UBE is already established and is grandfathered under the rule. Consequently, FCA expects to allow the omission of some information under our discretion to do so in §§ 611.1154(c) and 611.1155(b) of the rule. If a System institution chooses to divest its equity investment or withdraw as a partner or member in a grandfathered UBE, it is expected to follow the requirements of the UBE’s membership or partnership agreement. FCA also retains its right to require an institution to divest its equity interest in

a UBE under the provisions of § 611.1156.

#### 8. Disclosure and Reporting Requirements [§ 611.1157]

Because all System institutions organizing or investing in a UBE under the notice or approval provisions must also comply with the disclosure and reporting requirements of this section, we have deleted proposed § 611.1154(d) of the notice provision, which included the same requirement.

#### 9. Contents of the Annual Report to Shareholders [§ 620.5(a)(11)]

FCA is making a technical correction to this section by moving the annual disclosure requirement on UBEs from § 620.5(a)(11) to § 620.5(a)(12) in this final rule. This change is necessary because the final rule on Compensation, Retirement Programs, and Related Benefits included a new disclosure provision in § 620.5(a)(11).

Two commenters believe the disclosure requirements are overly prescriptive and that System institutions should determine the nature of the disclosure based on the relative materiality of the UBEs being disclosed. One commenter saw no value in listing the names of all UBEs formed to hold acquired property and suggested the disclosure be limited to the number of UBEs formed for that purpose.

To ensure transparency and meaningful disclosure, FCA retains the disclosure requirements as proposed. FCA believes that shareholders should be informed of the extent to which their institutions’ functions, services, or activities are being provided by State-organized or State-chartered non-System entities (the UBEs), the identity of these entities, their purpose and scope of activities, and their relationship to the institution itself. We also believe it is appropriate to vary the level of required disclosure depending on the purpose of the UBE rather than the relative materiality of a UBE, as one commenter suggested. Finally, as member-owned and member-controlled cooperatives, System boards of directors and executive management have an obligation to engage and communicate with their member-owners through financial reports that provide transparent and relevant information on the results of the institution’s business operations over the previous year.<sup>10</sup> Such annual disclosures, which inform the member-owners of the extent of the System institution’s activities

<sup>10</sup> See section 5.17(a)(8) of the Act; section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992; and §§ 620.3, 620.5, 630.5, and 630.20 of FCA regulations.

conducted through UBEs, are not overly burdensome or without merit.

#### IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not “small entities” as defined in the Regulatory Flexibility Act.

#### List of Subjects

##### 12 CFR Part 604

Sunshine Act.

##### 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

##### 12 CFR Part 612

Agriculture, Banks, banking, Conflict of interests, Crime, Investigations, Rural areas.

##### 12 CFR Part 619

Agriculture, Banks, banking, Rural areas.

##### 12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

##### 12 CFR Part 621

Accounting, Agriculture, Banks, banking, Penalties, Reporting and recordkeeping requirements, Rural areas.

##### 12 CFR Part 622

Administrative practice and procedure, Crime, Investigations, Penalties.

##### 12 CFR Part 623

Administrative practice and procedure.

##### 12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 604, 611, 612, 619, 620, 621, 622, 623, and 630 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

#### PART 604—FARM CREDIT ADMINISTRATION BOARD MEETINGS

- 1. The authority citation for part 604 continues to read as follows:

**Authority:** Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252).

##### § 604.420 [Amended]

- 2. Section 604.420 is amended by removing the words “service organizations” in paragraph (i)(1) and adding in their place, the words “service corporations chartered under the Act”.

#### PART 611—ORGANIZATION

- 3. The authority citation for part 611 is revised to read as follows:

**Authority:** Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

##### § 611.1130 [Amended]

- 4. Section 611.1130 is amended in the first sentence of paragraph (a) by removing the words “service organizations organized under the Act” and adding in their place, the words “service corporations chartered under the Act”.
- 5. Revise the heading of subpart I to read as follows:

#### Subpart I—Service Corporations

##### § 611.1136 [Amended]

- 6. Section 611.1136 is amended by:
- a. Revising the section heading;
- b. Removing the words “and unincorporated service organizations” in paragraph (c);
- c. Removing the words “service organization” or “service organizations” each place they appear and adding in their place, the words “service corporation” or “service corporations” respectively.

The revision reads as follows:

##### § 611.1136 Regulation and examination of service corporations.

\* \* \* \* \*

- 7. Add a new subpart J, consisting of §§ 611.1150–611.1158, to read as follows:

#### Subpart J—Unincorporated Business Entities

Sec.

- 611.1150 Purpose and scope.  
611.1151 Definitions.  
611.1152 Authority over equity investments in UBEs for business activity.  
611.1153 General restrictions and prohibitions on the use of UBEs.  
611.1154 Notice of equity investments in UBEs.  
611.1155 Approval of equity investments in UBEs.  
611.1156 Ongoing requirements.  
611.1157 Disclosure and reporting requirements.  
611.1158 Grandfather provision.

#### Subpart J—Unincorporated Business Entities

##### § 611.1150 Purpose and scope.

(a) *Purpose.* This subpart sets forth the parameters for one or more Farm Credit System (System) institutions to organize or invest in an Unincorporated Business Entity (UBE) in accordance with the Farm Credit Act of 1971, as amended (Act).

(b) *Scope.* Except as authorized under these regulations, no System institution may manage, control, become a member or partner, or invest in a State-organized or chartered business entity. This subpart applies to each System institution that organizes or invests in a UBE, including a UBE organized for the express purpose of investing in a Rural Business Investment Company. This subpart does not apply to UBEs that one or more System institutions have the authority to establish as Rural Business Investment Companies pursuant to the provisions of title VI of the Farm Security and Rural Investment Act of 2002, as amended (FSRIA) and United States Department of Agriculture regulations implementing FSRIA.

##### § 611.1151 Definitions.

For purposes of this subpart, the following definitions apply:

*Articles of formation* means registration certificates, charters, articles of organization, partnership agreements, membership or trust agreements, operating, administration or management agreements, fee agreements or any other documentation on the establishment, ownership, or operation of a UBE.

*Control* means that one System institution, directly or indirectly, owns more than 50 percent of the UBE’s equity or serves as the general partner of an LLLP, or constitutes the sole manager or the managing member of a UBE. However, under generally accepted accounting principles (GAAP), the power to control may also exist with a lesser percentage of ownership, for

example, if a System institution is the UBE's primary beneficiary, exercises significant influence over the UBE or establishes control under other facts and circumstances in accordance with GAAP. Under this definition, a System institution also will be deemed to have control over the UBE if it exercises decision-making authority in a principal capacity of the UBE as defined under GAAP.

*Equity investment* means a System institution's contribution of money or assets to the operating capital of a UBE that provides ownership rights in return.

*System institution* means each System bank under titles I or III of the Act, each System association under title II of the Act, and each service corporation chartered under section 4.25 of the Act.

*Third-party UBE* means a UBE that is owned or controlled by one or more non-System persons or entities as the term "control" is defined under GAAP.

*UBE* means a Limited Partnership (LP), Limited Liability Partnership (LLP), Limited Liability Limited Partnership (LLLP), Limited Liability Company (LLC), Business or other Trust Entity (TE), or other business entity established and maintained under State law that is not incorporated under any law or chartered under Federal law.

*UBE business activity* means the services and functions delivered by a UBE for one or more System institutions.

*Unusual and complex collateral* means acquired property that may expose the owner to risks beyond those commonly associated with loans, including, but not limited to, acquired industrial or manufacturing properties where there is increased risk of incurring potential environmental or other liabilities that may accrue to the owners of such properties.

**§ 611.1152 Authority over equity investments in UBEs for business activity.**

(a) *Regulation, supervisory, oversight, examination and enforcement authority.* FCA has regulatory, supervisory, oversight, examination and enforcement authority over each System institution's equity investment in or control of a UBE and the services and functions that a UBE performs for the System institution. This includes FCA's authority to require a System institution's dissolution of, disassociation from, or divestiture of an equity investment in a UBE, or to otherwise condition the approval of equity investments in UBEs.

(b) *Assessing UBE investments and business activity.* In accordance with section 5.15 of the Act, the cost of

regulating and examining System institutions' activities involving UBEs will be taken into account when assessing a System institution for the cost of administering the Act.

**§ 611.1153 General restrictions and prohibitions on the use of UBEs.**

(a) *Authorized UBE business activity.* All UBE business activity must be:

(1) Necessary or expedient to the business of one or more System institutions owning the UBE; and

(2) In no instance greater than the functions and services that one or more System institutions owning the UBE are authorized to perform under the Act and as determined by the FCA.

(b) *Circumvention of cooperative principles.* System institutions are prohibited from using UBEs to engage in direct lending activities or any other activity that would circumvent the application of cooperative principles, including borrower rights as described in section 4.14A of the Act, or stock ownership, voting rights or patronage as described in section 4.3A of the Act.

(c) *Transparency and the avoidance of conflicts of interest.* Each System institution must ensure that:

(1) The UBE is held out to the public as a separate or subsidiary entity;

(2) The business transactions, accounts, and records of the UBE are not commingled with those of the System institution; and

(3) All transactions between the UBE and System institution directors, officers, employees, and agents are conducted at arm's length, in the interest of the System institution, and in compliance with standards of conduct rules in §§ 612.2130 through 612.2270.

(d) *Limit on one-member UBEs.* A UBE owned solely by a single System institution (including between and among a parent agricultural credit association and its production credit association subsidiaries and between a parent agricultural credit bank and its subsidiary Farm Credit Bank) as a one-member UBE is limited to the following special purposes:

(1) Acquiring and managing the unusual or complex collateral associated with loans; and

(2) Providing limited services such as electronic transaction, fixed asset, trustee or other services that are integral to the daily internal operations of a System institution.

(e) *Limit on UBE partnerships.* A System institution operating through a parent-subsidiary structure may not create a UBE partnership between or among the parent agricultural credit association and its production credit

association and Federal land credit association subsidiaries or between a parent Agricultural Credit Bank and its Farm Credit Bank subsidiary.

(f) *Prohibition on UBE subsidiaries.* Except as provided in this paragraph, a System institution may not create a subsidiary of a UBE that it has organized or invested in under this subpart or enable the UBE itself to create a subsidiary or any other type of affiliated entity. A System institution may establish a UBE as a subsidiary of a UBE formed pursuant to paragraph (d)(1) of this section to hold each investor's pro-rata interest in acquired property provided that the loan collateral at issue involves a multi-lender transaction that includes System and non-System lenders.

(g) *Limit on potential liability.*

(1) Each System institution's equity investment in a UBE must be established in a manner that will limit potential exposure of the System institution to no more than the amount of its investment in the UBE.

(2) A System institution cannot become a general partner of any partnership other than an LLLP.

(h) *Limit on amount of equity investment in UBEs.* The aggregate amount of equity investments that a single System institution is authorized to hold in UBEs must not exceed one percent of the institution's total outstanding loans, calculated at the time of each investment. On a case-by-case basis, FCA may approve an exception to this limitation that would exceed the one-percent aggregate limit. Conversely, FCA may impose a percentage limit lower than the one-percent aggregate limit based on safety or soundness and other relevant concerns. This one-percent aggregate limit does not apply to equity investments in one-member UBEs formed for acquired property as permitted in paragraph (d)(1) of this section. Any equity investment made in a UBE by a service corporation must be attributed to its System institution owners based on the ownership percentage of each bank or association.

(i) *Prohibition on relationship with a third-party UBE.* A System institution is prohibited from:

(1) Making any equity investment in a third-party UBE except as may be authorized on a case-by-case basis under § 615.5140(e) of this chapter for de minimis and passive investments. Such requests would be considered outside of this rule.

(2) Serving as the general partner or manager of a third-party UBE; or

(3) Being designated as the primary beneficiary of a third-party UBE, either alone or with other System institutions.

(j) *Limitation on non-System equity investments.* Non-System persons or entities may not invest in a UBE that is controlled by a System institution except that non-System persons or entities may own 20 percent or less of the equity of a System-controlled UBE organized to deliver services integral to the daily internal operations of a System institution.

(k) *UBEs formed for acquiring and managing collateral.* The provisions of paragraphs (i) and (j) of this section do not apply to UBEs formed for the purpose of acquiring and managing unusual or complex collateral associated with multiple-lender loan transactions in which non-System persons or entities are participants.

**§ 611.1154 Notice of equity investments in UBEs.**

(a) *Applicability.* This notice provision is applicable only to System institutions that wish to make an equity investment in UBEs whose activities are limited to the following purposes:

(1) Acquiring and managing unusual or complex collateral associated with loans;

(2) Providing hail or multi-peril crop insurance services in collaboration with another System institution in accordance with § 618.8040 of this chapter; and

(3) Any other UBE business activity that FCA determines to be appropriate for this notice provision.

(b) *Notice requirements.* System institutions must provide written notice to FCA so that the notice is received by FCA no later than 10 business days in advance of making an equity investment in a UBE for authorized UBE business activity described in paragraph (a) of this section. The notice must include:

(1) The UBE's articles of formation, including its name and the State in which it is organized, length of time it will exist, its partners or members, and its management structure;

(2) The dollar amount of the System institution's equity investment in the UBE;

(3) A certified resolution of the System institution's board of directors authorizing the equity investment in, and business activity of, the UBE and the board's approval to submit the notice to the FCA. For UBEs organized to acquire and manage unusual or complex collateral associated with loans as identified in paragraph (a)(1) of this section, the board of directors may adopt a blanket board resolution to cover all such UBEs that the System institution will organize.

(4) Except for those UBEs identified in paragraph (a)(1) of this section, a board

statement included with the certified board resolution affirming that the UBE:

(i) Is needed to achieve operating efficiencies and benefits;

(ii) Is necessary or expedient to the System institution's business;

(iii) Will operate with transparency;

(iv) Will conduct its business activity in a manner designed to prevent conflicts of interest between its purpose and operations and the mission and operations of the System institution(s);

(v) Will otherwise be in compliance with applicable Federal, State, and local laws; and

(vi) Will not be used by the System institution to make direct loans; perform any functions or provide any services that the System institution is not authorized to perform or provide under the Act and FCA regulations; or to exceed the stated purpose of the UBE as set forth in its articles of formation.

(5) A letter from the funding bank that it has approved the institution's equity investment in the UBE. For those UBEs organized to acquire and manage unusual or complex collateral associated with loans as identified in paragraph (a)(1) of this section, the funding bank may provide a blanket approval letter to cover all such UBEs that its district associations may invest in or organize.

(6) Any additional information the System institution wishes to submit.

(c) *Supplementation or omission of information.* FCA may require the supplementation or allow the omission of any information required under paragraph (b) of this section.

(d) *Other requirements.* A System institution may not organize or invest in those UBEs identified in paragraph (a) of this section if the FCA notifies the institution before the end of the 10 business day advance notice period that such investment requires FCA approval under the provisions of § 611.1155.

**§ 611.1155 Approval of equity investments in UBEs.**

(a) *Request.* System institutions must receive FCA approval before organizing or investing in any UBE that does not qualify for the notice provision set forth in § 611.1154(a). A request for approval under this section must include the following information:

(1) A detailed statement of the risk characteristics of the investment, as required by § 615.5140(e) of this chapter and the initial amount of equity investment;

(2) A detailed statement on the purpose and objectives of the UBE; the need for the UBE and the operating efficiencies and benefits that will be achieved by using the UBE;

(3) The proposed articles of formation addressing, at a minimum, the following:

(i) The UBE's name, the State in which it is organized, the city and State in which its principal office is to be located, and its partners or members and management structure;

(ii) Specific business activities that the UBE will conduct;

(iii) General powers of the UBE;

(iv) Ownership, voting, partnership, membership and operating agreements for the UBE;

(v) Procedures to adopt and amend the partnership, membership or operating agreement of the UBE;

(vi) The standards and procedures for the application and distribution of the UBE's earnings; and

(vii) Length of time the UBE will exist.

(4) A certified resolution of the System institution's board of directors authorizing the equity investment in the UBE and the UBE business activity and the board's approval to submit the request to the FCA. The certified board resolution must include a board statement affirming that the UBE:

(i) Is necessary or expedient to the System institution's business;

(ii) Will operate with transparency;

(iii) Will conduct its business activity in a manner designed to prevent conflicts of interest between its purpose and operations and the mission and operations of the System institution(s);

(iv) Will comply with applicable Federal, State, and local laws; and

(v) Will not be used by the System institution to make direct loans; perform any functions or provide any services that the System institution is not authorized to perform or provide under the Act and FCA regulations; or exceed the purpose of the UBE as stated in its articles of formation.

(5) A letter from the funding bank that it has approved the institution's equity investment in the UBE;

(6) Any additional information the System institution wishes to submit.

(b) *Supplementation or omission of information.* FCA may require the supplementation or allow the omission of any information required under paragraph (a) of this section based on the complex or noncomplex nature of the proposed UBE.

(c) *Denial of a request.* The FCA will specify in writing to the submitting System institutions the reasons for denial of any request to organize or invest in a UBE.

**§ 611.1156 Ongoing requirements.**

A System institution that organizes or invests in a UBE must also comply with the following requirements:

(a) Maintain and ensure FCA's access to all books, papers, records, agreements, reports and other documents of each UBE necessary to document and protect the institution's interest in each entity;

(b) Divest, as soon as practicable, the institution's equity or beneficial interest in, and sever any relationship with a UBE:

(1) That conducts activities beyond those authorized to carry out its limited purpose or that are contrary to the Act or FCA regulations, or as otherwise directed to do so by FCA; or

(2) Where non-System persons or entities obtain control as defined under GAAP. This paragraph does not apply to UBEs formed for the purpose of acquiring and managing unusual or complex collateral associated with multiple-lender loan transactions in which non-System persons or entities are participants.

**§ 611.1157 Disclosure and reporting requirements.**

(a) *Annual report to shareholders.* In its annual report to shareholders, as set forth in § 620.5(a)(12) of this chapter, a System institution must provide information on its UBE investment and business activity.

(b) *Periodic reports as directed.* As directed by FCA, a System institution must submit periodic reports to FCA on any equity investment in a UBE or UBE status as provided under § 621.12 of this chapter, and in accordance with §§ 621.13 and 621.14 of this chapter.

(c) *Dissolution of a UBE.* A System institution must submit a timely report to FCA on the dissolution of a UBE that it controls.

**§ 611.1158 Grandfather provision.**

(a) *Scope.* The following equity investments in UBEs are grandfathered from the Notice and Approval provisions under §§ 611.1154 and 611.1155, respectively.

(1) Those UBE formations or equity investments that received specific, written approval by FCA prior to the effective date of this regulation; and

(2) Those UBE formations or equity investments that occurred prior to the effective date of this regulation to acquire or manage unusual or complex collateral associated with loans.

(b) *System institutions' obligations.* All System institutions with grandfathered UBEs:

(1) Remain subject to their conditions of approval;

(2) Are subject to the ongoing requirements of § 611.1156 and the disclosure and reporting requirements of § 611.1157; and

(3) May not change or expand the authorized business activity, service, or function of the UBE as approved by FCA, add or increase the level of non-System ownership in the UBE to the extent such ownership is authorized under § 611.1153(j), or change control of the UBE as control is defined in § 611.1151 without giving written notice of such changes to FCA at least 10 business days in advance of any such change or expansion.

(4) A System institution may not proceed with any change or expansion as defined in paragraph (b)(3) of this section if the FCA notifies the institution before the end of the 10 business day advance notice period that the proposed change or expansion is material and must be submitted for FCA approval under the provisions of § 611.1155.

(c) *System institution investments or reinvestments in grandfathered UBEs.* System institutions investing for the first time in grandfathered UBEs or reinvesting after having previously divested their equity investment must provide notice to FCA or obtain FCA approval under either the notice provision in § 611.1154 or the approval provision in § 611.1155 depending on the function, service, or activity of the grandfathered UBE in which the institution seeks to invest or reinvest.

**PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS**

■ 8. The authority citation for part 612 continues to read as follows:

**Authority:** Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

■ 9. Section 612.2130 is amended by revising paragraphs (p) and (t) to read as follows:

**§ 612.2130 Definitions.**

\* \* \* \* \*

(p) *Service corporation* means each service corporation chartered under the Act.

\* \* \* \* \*

(t) *System institution* and *institution* mean any bank, association, or service corporation in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, Agricultural Credit Banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, the Federal Farm Credit Banks Funding Corporation, and service corporations chartered under the Act.

**PART 619—DEFINITIONS**

■ 10. The authority citation for part 619 continues to read as follows:

**Authority:** Secs. 1.4, 1.5, 1.7, 2.1, 2.2, 2.4, 2.11, 2.12, 3.1, 3.2, 3.21, 4.9, 5.9, 5.17, 5.19, 7.0, 7.1, 7.6, 7.8, and 7.12 of the Farm Credit Act (12 U.S.C. 2012, 2013, 2015, 2072, 2073, 2075, 2092, 2093, 2122, 2123, 2142, 2160, 2243, 2252, 2254, 2279a, 2279a-1, 2279b, 2279c-1, 2279f); sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

■ 11. Add a new § 619.9338 to read as follows:

**§ 619.9338 Unincorporated business entities.**

An *Unincorporated Business Entity* means a Limited Partnership (LP), Limited Liability Partnership (LLP), Limited Liability Limited Partnership (LLLLP), Limited Liability Company (LLC), Business or other Trust Entity (TE), or other business entity established and maintained under State law that is not incorporated under any law or chartered under Federal law.

**PART 620—DISCLOSURE TO SHAREHOLDERS**

■ 12. The authority citation for part 620 continues to read as follows:

**Authority:** Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

**Subpart B—Annual Report to Shareholders**

■ 13. Section 620.5 is amended by:

■ a. Removing the words “service organization” in paragraph (a)(3) and adding in their place, the words “service corporation chartered under the Act”; and

■ b. Adding a new paragraph (a)(12) to read as follows:

**§ 620.5 Contents of the annual report to shareholders.**

\* \* \* \* \*

(a) \* \* \*  
(12) For banks and associations, business relationships with unincorporated business entities (UBE).

(i) Except as provided in paragraph (a)(12)(ii) of this section, describe the business relationship with any UBE, as defined in § 611.1151 of this chapter, that was organized by the bank or association or in which the bank or association has an equity interest. Include in the description the name of the UBE, the type of business entity, the purpose for which the UBE was organized, the scope of its activities, and the level of ownership. If the bank or

association does not have an equity interest, but manages the operations of a UBE that is controlled by a System institution, describe this business relationship and any fees received.

(ii) If the UBE is organized for the purpose of acquiring and managing unusual or complex collateral associated with loans, the bank or association need only disclose the name of the UBE, the type of business entity, and the purpose for which the UBE was organized.

#### **PART 621—ACCOUNTING AND REPORTING REQUIREMENTS**

■ 14. The authority citation for part 621 continues to read as follows:

**Authority:** Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11); sec. 514 of Pub. L. 102–552.

##### **§ 621.1 [Amended]**

■ 15. Section 621.1 is amended by removing the words “service organizations” and adding in their place, the words “service corporations”.

##### **§ 621.2 [Amended]**

■ 16. Section 621.2(e) is amended by removing the words “service organization” and adding in their place, the words “service corporation”.

#### **PART 622—RULES OF PRACTICE AND PROCEDURE**

■ 17. The authority citation for part 622 continues to read as follows:

**Authority:** Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

##### **§ 622.2 [Amended]**

■ 18. Section 622.2(d) is amended by removing the words “service organization chartered under part E of title IV of the Act” and adding in their place, the words “service corporation chartered under the Act”.

#### **PART 623—PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION**

■ 19. The authority citation for part 623 is revised to read as follows:

**Authority:** Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273).

##### **§ 623.2 [Amended]**

■ 20. Section 623.2(d) is amended by removing the words “service organization chartered under part E of title IV of the Act” and adding in their place, the words “service corporation chartered under the Act”.

#### **PART 630—DISCLOSURE TO INVESTORS IN SYSTEM-WIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM**

■ 21. The authority citation for part 630 continues to read as follows:

**Authority:** Secs. 4.2, 4.9, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2153, 2160, 2243, 2252, 2254); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

##### **§ 630.20 [Amended]**

■ 22. Section 630.20 is amended by removing the words “service organization” in paragraph (a)(2) and adding in their place, the words “service corporation”.

Dated: May 21, 2013.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2013–12594 Filed 5–24–13; 8:45 am]

**BILLING CODE 6705–01–P**

#### **DEPARTMENT OF TRANSPORTATION**

##### **Federal Aviation Administration**

##### **14 CFR Part 25**

[Docket No. FAA–2013–0148; Special Conditions No. 25–490–SC]

##### **Special Conditions: Embraer S.A., Model EMB–550 Airplane; Landing Pitchover Condition**

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

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Embraer S.A. Model EMB–550 airplane. This airplane will have a novel or unusual design feature associated with landing loads due to the automatic braking system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These 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:** *Effective Date:* June 27, 2013.

**FOR FURTHER INFORMATION CONTACT:** Todd Martin, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–1178; facsimile 425–227–1232.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

On May 14, 2009, Embraer S.A. applied for a type certificate for their new Model EMB–550 airplane. The Model EMB–550 airplane is the first of a new family of jet airplanes designed for corporate flight, fractional, charter, and private owner operations. The aircraft has a conventional configuration with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB–550 airplane is designed for 8 passengers, with a maximum of 12 passengers. It is equipped with two Honeywell HTF7500–E medium bypass ratio turbofan engines mounted on aft fuselage pylons. Each engine produces approximately 6,540 pounds of thrust for normal takeoff. The primary flight controls consist of hydraulically powered fly-by-wire elevators, aileron and rudder, controlled by the pilot or copilot sidestick.

The Model EMB–550 airplane is equipped with an automatic braking system. This feature is a pilot-selectable function that allows earlier braking at landing without pilot pedal input. When the autobrake system is armed before landing, it automatically commands a pre-defined braking action after the main wheels touch down. This might cause a high nose gear sink rate, and potentially higher gear and airframe loads than would occur with a traditional braking system. Therefore, the FAA has determined special conditions are necessary.

#### **Type Certification Basis**

Under the provisions of 14 CFR 21.17, Embraer S.A. must show that the Model EMB–550 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–127 thereto.

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 Model EMB–550 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 type certificate for that model be amended later to include any other model that incorporates 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 Embraer S.A. Model EMB-550 airplane 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 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

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 § 21.17(a)(2).

### Novel or Unusual Design Features

The Embraer S.A. Model EMB-550 airplane is equipped with an automatic braking system, which is a pilot-selectable function that allows earlier maximum braking at landing without pilot pedal input. When the autobrake system is armed before landing, it automatically commands maximum braking at main wheels touchdown. This will cause a high nose gear sink rate, and potentially higher gear and airframe loads than would occur with a traditional braking system.

### Discussion

These special conditions define a landing pitchover condition that accounts for the effects of the automatic braking system. The special conditions define the airplane configuration, speeds, and other parameters necessary to develop airframe and nose gear loads for this condition. The special conditions require that the airplane be designed to support the resulting limit and ultimate loads as defined in § 25.305.

### Discussion of Comments

Notice of proposed special conditions No. 25-13-01-SC for the Embraer S.A. Model EMB-550 airplanes was published in the **Federal Register** on February 19, 2013 (78 FR 11609). No comments were received, and the special conditions are adopted as proposed.

### Applicability

As discussed above, these special conditions are applicable to the Embraer S.A. Model EMB-550 airplane. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating 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 airplanes. It is not a rule of general applicability.

### 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 Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer S.A. Model EMB-550 airplanes.

### Landing Pitchover Condition

A landing pitchover condition must be addressed that takes into account the effect of the autobrake system. The airplane is assumed to be at the design maximum landing weight, or at the maximum weight allowed with the autobrake system on. The airplane is assumed to land in a tail-down attitude and at the speeds defined in § 25.481. Following main gear contact, the airplane is assumed to rotate about the main gear wheels at the highest pitch rate allowed by the autobrake system. This is considered a limit load condition from which ultimate loads must also be determined. Loads must be determined for critical fuel and payload distributions and centers of gravity. Nose gear loads, as well as airframe loads, must be determined. The airplane must support these loads as described in § 25.305.

Issued in Renton, Washington, on May 21, 2013.

**Jeff Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2012-1301; Special Conditions No. 25-491-SC]

### Special Conditions: Embraer S.A., Model EMB-550 Airplane, Dive Speed Definition With Speed Protection System

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

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Embraer S.A. Model EMB-550 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include a high-speed protection system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These 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:** *Effective Date:* June 27, 2013.

**FOR FURTHER INFORMATION CONTACT:** Todd Martin, FAA, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057-3356; telephone 425-227-1178; facsimile 425-227-1149.

### SUPPLEMENTARY INFORMATION:

#### Background

On May 14, 2009, Embraer S.A. applied for a type certificate for their new Model EMB-550 airplane. The Model EMB-550 airplane is the first of a new family of jet airplanes designed for corporate flight, fractional, charter, and private owner operations. The aircraft has a conventional configuration with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB-550 airplane is designed for 8 passengers, with a maximum of 12 passengers. It is equipped with two Honeywell HTF7500-E medium bypass ratio turbofan engines mounted on aft fuselage pylons. Each engine produces approximately 6,540 pounds of thrust for normal takeoff. The primary flight controls consist of hydraulically powered fly-by-wire elevators, ailerons and rudder, controlled by the pilot or copilot sidestick.

The Model EMB-550 airplane incorporates a high-speed protection system in the airplane's flight control laws. The airplane's high-speed protection system limits nose-down pilot authority by adding automatic control inputs at threshold speeds above  $V_{MO}/M_{MO}$ , which influence the results of the traditional recovery maneuvers required in Title 14, Code of Federal Regulations (14 CFR) 25.335(b)(1). This speed protection system was not envisioned when § 25.335 was promulgated.

### Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer S.A. must show that the Model EMB-550 airplane meets the applicable provisions of part 25, as amended by Amendments 25-1 through 25-127 thereto.

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 Model EMB-550 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 type certificate for that model be amended later to include any other model that incorporates 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 Model EMB-550 airplane 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 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

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 § 21.17(a)(2).

### Novel or Unusual Design Features

The Model EMB-550 airplane will incorporate the following novel or unusual design features: a high-speed protection system that limits nose-down pilot authority at speeds above  $V_{MO}/M_{MO}$ . This system prevents the airplane from performing the maneuver required under § 25.335(b)(1).

### Discussion

Section 25.335(b)(1) is a dive speed condition that was originally adopted in part 4b of the Civil Air Regulations in order to provide an acceptable speed margin between design cruise speed and design dive speed. Flutter clearance design speeds and airframe design loads are impacted by the design dive speed. While the initial condition for the upset specified in the rule is 1g level flight, protection is afforded for other inadvertent overspeed conditions as well. Section 25.335(b)(1) is intended as a conservative enveloping condition for potential overspeed conditions,

including non-symmetric conditions. To ensure that potential overspeed conditions are covered, the applicant should demonstrate that the dive speed will not be exceeded in inadvertent, or gust-induced, upsets resulting in initiation of the dive from non-symmetric attitudes; or that the airplane is protected by the flight control laws from getting into non-symmetric upset conditions. The applicant should conduct a demonstration that includes a comprehensive set of conditions, as described in the special conditions.

These special conditions are in lieu of § 25.335(b)(1). Section 25.335(b)(2), which also addresses the design dive speed, is applied separately. Advisory Circular (AC) 25.335-1A, *Design Dive Speed*, dated September 29, 2000, provides an acceptable means of compliance to § 25.335(b)(2).

Special conditions are necessary to address the high-speed protection system on the Model EMB-550. The special conditions identify various symmetric and non-symmetric maneuvers that will ensure that an appropriate design dive speed,  $V_D/M_D$ , is established.

These 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.

This special condition is in lieu of 14 CFR 25.335(b)(1). Section 25.335(b)(2), also addresses the design dive speed, but it is applied separately. Advisory Circular (AC) 25.335-1A, *Design Dive Speed*, dated September 29, 2000, provides an acceptable means of compliance to § 25.335(b)(2).

### Discussion of Comments

Notice of proposed special conditions number 25-12-18-SC for the Embraer S.A. Model EMB-550 airplanes was published in the **Federal Register** on January 24, 2013 (78 FR 5146). We received no substantive comments, and the special conditions are adopted as proposed.

### Applicability

As discussed above, these special conditions are applicable to the Model EMB-550 airplane. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating 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 airplanes. It is not a rule of general applicability.

### 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 Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer S.A. Model EMB-550 airplanes.

#### 1. Dive Speed Definition with Speed Protection System.

(1) In lieu of the requirements of 14 CFR 25.335(b)(1), if the flight control system includes functions that act automatically to initiate recovery before the end of the 20-second period specified in § 25.335(b)(1),  $V_D/M_D$  must be determined from the greater of the speeds resulting from the conditions (a) and (b) below. The speed increase occurring in these maneuvers may be calculated if reliable or conservative aerodynamic data are used.

(a) From an initial condition of stabilized flight at  $V_C/M_C$ , the airplane is upset and takes a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to try and maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5g (0.5 acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power, as specified in § 25.175(b)(1)(iv), is assumed until recovery is initiated, at which time power reduction and pilot-controlled drag devices may be used.

(b) From a speed below  $V_C/M_C$ , with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through  $V_C/M_C$  at a flight path 15 degrees below the initial path (or at the steepest nose down attitude that the system will permit with full control authority if less than 15 degrees). The pilot's controls may be in the neutral position after reaching  $V_C/M_C$  and before recovery is initiated. Recovery may be initiated three seconds after operation of the high-speed warning system by application of a load of 1.5g (0.5 acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously.

All other means of decelerating the airplane, the use of which is authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

(2) The applicant must also demonstrate that the speed margin, established as above, will not be exceeded in inadvertent, or gust-induced, upsets resulting in initiation of the dive from non-symmetric attitudes, unless the airplane is protected by the flight control laws from getting into non-symmetric upset conditions. The upset maneuvers described in paragraphs 32.c(3)(a) and 32.c(3)(c) of AC 25-7C, *Flight Test Guide for Certification of Transport Category Airplanes*, dated October 16, 2012, may be used to comply with this requirement.

(3) Any failure of the high-speed protection system that would result in an airspeed exceeding those determined by paragraphs (1) and (2) must be less than  $10^{-5}$  per flight hour.

(4) Failures of the system must be annunciated to the pilots. Flight manual instructions must be provided that reduce the maximum operating speeds  $V_{MO}/M_{MO}$ . The operating speed must be reduced to a value that maintains a speed margin between  $V_{MO}/M_{MO}$  and  $V_D/M_D$  that is consistent with showing compliance with § 25.335(b) without the benefit of the high-speed protection system.

(5) Dispatch of the airplane with the high-speed protection system inoperative could be allowed under an approved minimum equipment list (MEL) that would require flight manual instructions to indicate reduced maximum operating speeds, as described in paragraph (4). In addition, the flightdeck display of the reduced operating speeds, as well as the overspeed warning for exceeding those speeds, must be equivalent to that of the normal airplane with the high-speed protection system operative. Also, it must be shown that no additional hazards are introduced with the high-speed protection system inoperative.

Issued in Renton, Washington, on May 21, 2013.

**Jeff Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013-12535 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2012-1332; Special Conditions No. 25-492-SC]

#### Special Conditions: Embraer S.A., Model EMB-550 Airplanes; Flight Envelope Protection: General Limiting Requirements

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

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Embraer S.A. Model EMB-550 airplane. This airplane will have a novel or unusual design feature, specifically new control architecture and a full digital flight control system which provides flight envelope protections. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These 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:** *Effective Date:* June 27, 2013.

**FOR FURTHER INFORMATION CONTACT:** Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone 425-227-2011; facsimile 425-227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 14, 2009, Embraer S.A. applied for a type certificate for their new Model EMB-550 airplane. The Model EMB-550 airplane is the first of a new family of jet airplanes designed for corporate flight, fractional, charter, and private owner operations. The aircraft has a conventional configuration with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB-550 airplane is designed for 8 passengers, with a maximum of 12 passengers. It is equipped with two Honeywell HTF7500-E medium bypass ratio turbofan engines mounted on aft fuselage pylons. Each engine produces approximately 6,540 pounds of thrust for normal takeoff. The primary flight controls consist of hydraulically powered fly-by-wire elevators, aileron and rudder, controlled by the pilot or copilot sidestick.

Embraer S.A. has developed comprehensive flight envelope protection features integral to the electronic flight control system design. These flight envelope protection features include limitations on angle-of-attack, normal load factor, bank angle, pitch angle, and speed. To accomplish this flight-envelope-limiting, a significant change (or multiple changes) occurs in the control laws of the electronic flight control system as the limit is approached or exceeded. When failure states occur in the electronic flight control system, flight envelope protection features can likewise either be modified, or in some cases, eliminated. The current regulations were not written with these comprehensive flight-envelope-limiting systems in mind.

##### Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Embraer S.A. must show that the Model EMB-550 airplane meets the applicable provisions of part 25, as amended by Amendments 25-1 through 25-127 thereto.

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 Model EMB-550 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 type certificate for that model be amended later to include any other model that incorporates 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 Model EMB-550 airplane 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 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92-574, the "Noise Control Act of 1972."

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 § 21.17(a)(2).

##### Novel or Unusual Design Features

The Model EMB-550 airplane will incorporate the following novel or unusual design features: new control

architecture and a full digital flight control system which provides comprehensive flight envelope protections.

#### Discussion

The applicable airworthiness regulation in this instance is 14 CFR § 25.143. The purpose of § 25.143 is to verify that any operational maneuvers conducted within the operational envelope can be accomplished smoothly with average piloting skill and without exceeding any structural limits. The pilot should be able to predict the airplane response to any control input. During the course of the flight test program, the pilot determines compliance with § 25.143 through primarily qualitative methods. During flight test, the pilot should evaluate all of the following:

- The interface between each protection function,
- Transitions from one mode to another,
- The aircraft response to intentional dynamic maneuvering, whenever applicable, through dedicated maneuvers,
- General controllability assessment,
- High speed characteristics, and
- High angle-of-attack.

Section § 25.143, however, does not adequately ensure that the novel or unusual features of the Model EMB-550 airplane will have a level of safety equivalent to that of existing standards. This special condition is therefore required to accommodate the the flight-envelope-limiting systems in the Model EMB-550 airplane. The additional safety standards in this special condition will ensure a level of safety equivalent to that of existing standards.

#### Discussion of Comments

Notice of proposed special conditions number 25-19-SC for the Embraer S.A. Model EMB-550 airplanes was published in the **Federal Register** on January 24, 2013 (78 FR 5148). No comments were received, and the special conditions are adopted as proposed.

#### Applicability

As discussed above, these special conditions are applicable to the Model EMB-550 airplane. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating 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 airplanes. It is not a rule of general applicability.

#### 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 Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer S.A. Model EMB-550 airplanes.

1. *General Limiting Requirements:*
  - a. Onset characteristics of each envelope protection feature must be smooth, appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change airplane flight path, speed, or attitude as needed.
  - b. Limit values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with the following:
    - i. Airplane structural limits,
    - ii. Required safe and controllable maneuvering of the airplane, and
    - iii. Margins to critical conditions. Unsafe flight characteristics/conditions must not result if dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions, in any appropriate combination and phase of flight, can produce a limited flight parameter beyond the nominal design limit value.
  - c. The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics such as damping and overshoot must also be appropriate for the flight maneuver and limit parameter in question.
  - d. When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

2. *Failure States:* Electronic flight control system failures (including sensor) must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The crew must be alerted by suitable means if any change in envelope limiting or maneuverability is produced by single or multiple failures of the electronic flight control system not shown to be extremely improbable.

Issued in Renton, Washington, on May 21, 2013.

**Jeff Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013-12536 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-13-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2012-0821; Airspace Docket No. 12-ASW-8]

#### Establishment of Class E Airspace; Beeville-Chase Field, TX

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

**ACTION:** Final rule, correction.

**SUMMARY:** This action makes a correction to the title and airspace description of a final rule published in the **Federal Register** of March 28, 2013. The title and airspace designation are corrected to read Beeville-Chase Field, TX.

**DATES:** Effective date: 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321-7716.

#### SUPPLEMENTARY INFORMATION:

##### History

**Federal Register** document FAA 2012-0821, Airspace Docket No. 12-ASW-8, establishes Class E Airspace at Chase Field Industrial Airport, Beeville, TX (78 FR 18801, March 28, 2013). Subsequent to publication, the FAA found that existing controlled airspace already is charted for another airport at Beeville, TX, with the same descriptor. Since there can only be one Beeville, TX, the title and airspace designation for Chase Field Industrial Airport is changed from Beeville, TX, to Beeville-Chase Field, TX. This correction is related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated

August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

#### Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, on page 18801, column 2, line 14, the title as published in the **Federal Register** of March 28, 2013 (78 FR 18801) FR Doc. 2013-06913, is corrected to read “. . . Beeville-Chase Field, TX”; and on page 18802, column 1, line 31, the legal description is changed as follows:

\* \* \* \* \*

#### ASW TX E5 Beeville-Chase Field, TX [Corrected]

Chase Field Industrial Airport, TX  
(Lat. 28°21'36" N., long. 97°39'36" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Chase Field Industrial Airport.

Issued in Fort Worth, Texas, on May 15, 2013.

**David P. Medina,**

*Manager Operations Support Group, ATO  
Central Service Center.*

[FR Doc. 2013-12482 Filed 5-24-13; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2013-0370]

#### Drawbridge Operation Regulation; Cumberland River, Nashville, TN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Louisville and Nashville Railroad Drawbridge across the Cumberland River, mile 190.4, at Nashville, Tennessee. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. This deviation allows the bridge to remain in the closed-to-navigation position while a worn gear and shaft assembly are replaced.

**DATES:** This deviation is effective from 8 a.m., May 28, 2013 to 6 p.m., May 29, 2013.

**ADDRESSES:** The docket for this deviation, [USCG-2013-0370] is

available at <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 deviation. 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 temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314-269-2378, email [Eric.Washburn@uscg.mil](mailto:Eric.Washburn@uscg.mil). If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:** The CSX Transportation, Inc. requested a temporary deviation for the Louisville and Nashville Railroad Drawbridge, across the Cumberland River, mile 190.4, at Nashville, Tennessee to remain in the closed-to-navigation position while a worn gear and shaft assembly are replaced. The closure period will start at 8 a.m., May 28, 2013 to 6 p.m., May 29, 2013.

Once the worn gear and shaft assembly are removed, the swing span will not be able to open, even for emergencies, until the replacement of the gear and shaft assembly is installed.

The Louisville and Nashville Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart. In order to facilitate the needed bridge work, the drawbridge must be kept in the closed-to-navigation position.

There are no alternate routes for vessels transiting this section of the Cumberland River.

The Louisville and Nashville Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 47 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with the waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated period of this temporary deviation. This deviation

from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 8, 2013.

**Eric A. Washburn,**

*Bridge Administrator, Western Rivers.*

[FR Doc. 2013-12542 Filed 5-24-13; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2013-0377]

RIN 1625-AA00

#### Safety Zone; USO Patriotic Festival Air Show, Atlantic Ocean; Virginia Beach, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Atlantic Ocean in Virginia Beach, VA. This action is necessary to provide for the safety of life on navigable waters during the USO Patriotic Festival Air Show. This action is intended to restrict vessel traffic movement in the restricted area in order to protect mariners from the hazards associated with air show events.

**DATES:** This rule is effective from May 31, 2013, at 12 p.m. until June 2, 2013, at 3 p.m. This rule is enforced from 12 p.m. to 3 p.m. daily between May 31, 2013, and June 2, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG-2013-0377]. 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 LCDR 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 Barbara

Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

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

**A. Regulatory History and Information**

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details of the event were not known to the Coast Guard until recently. Publishing an NPRM would be impracticable because there is insufficient time to hold a comment period and immediate action is needed to provide for the safety of life and property on navigable waters.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this safety zone would be impracticable and contrary to the public interest since immediate action is needed to ensure the safety of the event participants, spectator craft, and other vessels transiting the event area.

**B. Basis and Purpose**

From May 31, 2013, through June 2, 2013, Whisper Concerts Entertainment, Inc. will host an air show event over the Atlantic Ocean in Virginia Beach, VA. In recent years, there have been unfortunate incidents involving jets and planes crashing during performances at air shows. Additionally, there is typically a wide area of scattered debris that could damage property and cause significant injury or death to mariners observing the air shows. In order to protect mariners and the public transiting the Atlantic Ocean immediately below the air show from hazards associated with the air show, the Coast Guard will establish a safety zone.

**C. Discussion of the Final Rule**

The Coast Guard is establishing a safety zone on specified waters of the

Chesapeake Bay bounded by the following coordinates: 36°-49'-50" N/075°-58'-02" W, 36°-51'-46" N/075°-58'-33" W, 36°-51'-53" N/075°-57'-57" W, 36°-49'-57" N/075°-57'-26" W (NAD 1983), in the vicinity of Virginia Beach, Virginia. This safety zone will be enforced from May 31, 2013, until June 2, 2013 between the hours of 12 p.m. and 3 p.m. each day. Access to the safety zone will be restricted during the specified date and times. No person or vessel may enter or remain in the safety zone except for vessels authorized by the Captain of the Port or his Representative.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) the safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

*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 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 because the zone will only be in place

for a limited duration and maritime advisories will be issued allowing the mariners to adjust their plans accordingly.

This rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the Atlantic Ocean from May 31, 2013, until June 2, 2013, between the hours of 12 p.m. and 3 p.m. each day.

*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 safety zone on the navigable waters of the Atlantic Ocean in Virginia Beach, VA in order to restrict vessel traffic movement to protect mariners from the hazards associated with air show events. 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 will be available in the docket where indicated under **ADDRESSES**.

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

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

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

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

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

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

■ 2. Add § 165.T05–0377 to read as follows:

#### **§ 165.T05–0377 Safety Zone; USO Patriotic Festival Air Show, Atlantic Ocean; Virginia Beach, VA.**

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the vicinity of the Atlantic Ocean in Virginia Beach, VA bound by the following coordinates: 36°-49′-50″ N/075°-58′-02″ W, 36°-51′-46″ N/075°-58′-33″ W, 36°-51′-53″ N/075°-57′-57″ W, 36°-49′-57″ N/075°-57′-26″ W (NAD 1983).

(b) *Definition.* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

#### (c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period.* This regulation will be enforced from May 31, 2013, until June 2, 2013, between the hours of 12 p.m. and 3 p.m. each day.

Dated: May 13, 2013.

**John K. Little,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 2013–12541 Filed 5–24–13; 8:45 am]

**BILLING CODE 9110–04–P**

#### **LIBRARY OF CONGRESS**

#### **Copyright Royalty Board**

#### **37 CFR Part 382**

[Docket No. 2011–1 CRB PSS/Satellite II]

#### **Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services**

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final determination; modification.

**SUMMARY:** The Copyright Royalty Judges announce a modification to their final determination of rates and terms for the

digital transmission of sound recordings and the reproduction of ephemeral recordings by preexisting subscription services and preexisting satellite digital audio radio services for the period beginning January 1, 2013, and ending on December 31, 2017. The modification addresses an error identified by the Register of Copyrights concerning the resolution of a material question of substantive law relating to the rates and terms set for preexisting subscription services.

**FOR FURTHER INFORMATION CONTACT:** Gina Giuffreda, Attorney Advisor. Telephone: (202) 707-7658. Telefax: (202) 252-3423.

**SUPPLEMENTARY INFORMATION:** The Copyright Royalty Judges (“Judges”) issued a Final Determination in the captioned proceeding on February 14, 2013. The Librarian of Congress published the Final Determination on April 17, 2013, as required by 17 U.S.C. 803(c)(6).<sup>1</sup> See 78 FR 23054. The Register of Copyrights (“Register”) may review any determination by the Judges for legal error in resolution of a material issue of substantive law under the Copyright Act (“Act”) found in title 17, United States Code. 17 U.S.C. 802(f)(1)(D). If the Register finds such legal error, her decision identifying and correcting the error is published in the **Federal Register**, along with the Final Determination. Although the Register’s decision does not change the rates and terms set in the Final Determination, her opinion is binding on the Judges prospectively. Section 803(c)(4) of the Copyright Act authorizes the Judges to issue amendments to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination.

In the Final Determination, the Judges found that the current statutory rate of 7.5% of Gross Revenues for Pre-existing Subscription Services (“PSS”) was the appropriate rate upon which to consider whether a policy adjustment was warranted under the factors set forth in Section 801(b) of the Copyright Act. In applying those factors as required by the statute, the Judges determined that, under the second of those factors (afford the copyright owner a fair return for his

or her creative work and the copyright user a fair income under existing economic conditions) a 1 percent upward adjustment (phased in over the first two years of the rate period) from the current rate was warranted. The Register found that it was legal error for the Judges not to then apply (or reapply as the case may be) the Section 801(b) factors with respect to those adjusted rates. See 78 FR 22913 (Apr. 17, 2013). After careful consideration, the Judges find that such a supplemental review of the application of the Section 801(b) factors is technical in nature and is therefore amenable to correction pursuant to the Judges’ authority under Section 803(c)(4) of the Copyright Act. In this Amendment, the Judges do not revisit any of the analysis in the Determination relating to the base rate; rather, they articulate the outcome of application of the Section 801(b) factors to the prospective rates—an application cited by the Register of Copyrights as missing in the Determination.<sup>2</sup>

The Judges, therefore, issue this Technical Amendment to the Final Determination. The Amendment is confined to Section V.A.3.c.1. of the Final Determination. All other portions of the Final Determination, including the rates and terms, are unchanged. The amended text, which is bracketed, appears below.

### 1. Application of Section 801(b) Factors

Based on the record evidence in this proceeding, the Judges have determined that the benchmark evidence submitted by Music Choice and SoundExchange has failed to provide the means for determining a reasonable rate for the PSS, other than, perhaps to indicate the extreme ends of the range of reasonable rates. The testimony and argument of Music Choice demonstrates nothing more than to show that a reasonable rate cannot be as low as the rates (i.e., [REDACTED] of Music Choice’s revenues) paid by Music Choice to the three performing rights societies for the public performance of musical works. The benchmark testimony of SoundExchange is of even lesser value. The proposed rate of 15% for the PSS for the first year of the licensing period, deemed reasonable by Dr. Ford (at least in the beginning of the licensing

period), stands as the upper bound of the range of reasonable rates. Within that range is the current 7.5% rate. On the record before us, the Judges are persuaded that the current rate is neither too high, too low, nor otherwise inappropriate, subject to consideration of the Section 801(b) factors discussed below.<sup>3</sup>

#### a. Maximize Availability of Creative Works

To argue for an adjustment in its favor under the first Section 801(b) factor, Music Choice touts that it is a music service that is available in over 54 million homes, with 40 million customers using the service every month. 8/16/12 Tr. 3878:3 (Del Beccaro); 6/11/12 Tr. 1462:5–11, 1486:19–1487:2 (Del Beccaro).

According to Music Choice, channel offerings have increased through the years, and they are curated by experts in a variety of music genres. Del Beccaro Corrected WDT at 3, 24, PSS Trial Ex. 1. Music Choice also highlights recent developments in technology that enable Music Choice to display original on-screen content identifying pertinent information regarding the songs and artists being performed. Id. at 24, MC 23; Williams WDT at 12, PSS Trial Ex. 3; 6/11/12 Tr. 1461:14–1462: 1, 1491:2–12 (Del Beccaro). According to Music Choice, these elements, along with certain promotional efforts that Music Choice makes on behalf of artists, support a downward adjustment in the rates. In any event, an upward adjustment in the rates, argues Music Choice, would not affect the record companies’ bottom-line because PSS royalties are not a material revenue source for record companies. Music Choice PFF ¶¶ 409–417.

SoundExchange submits that a market rate incorporates considerations under the first Section 801(b) factor, citing the decision in SDARS–I, and that if PSS rates turn out to be too high and drive Music Choice from the market, presumably consumers will shift to alternative providers of digital music

<sup>3</sup> [As discussed below, the Judges conclude that the second Section 801(b) factor (afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions) warrants a 1 percent upward adjustment (to 8.5% phased in from 8.0% in 2013 to 8.5% for 2014 through 2017) from the current statutory rate of 7.5%. In her April 9, 2013, decision, the Register of Copyrights found that the Judges erred by not considering the 8.0% and 8.5% rates under the Section 801(b) factors. After carefully reviewing the evidence, the Judges conclude that none of the Section 801(b) factors warrants an adjustment, either upward or downward, from the 8.5% rate that the Judges selected for the PSS for 2014 through 2017, or for the 8.0% rate that the Judges selected for 2013.]

<sup>1</sup> The Final Determination was not a unanimous decision. Judge William Roberts issued a dissenting opinion on the same date; his dissent was published with the Final Determination. See 78 FR 23075–96 (Apr. 17, 2013). References to the “Judges” in this Amendment are references to the Judges issuing the majority determination.

<sup>2</sup> The Judges believe their interpretation of Section 803(c)(4) is not only consistent with the flexibility that Congress intended to grant the Judges to correct their own determinations, but also consistent with the Register of Copyrights’ application of the term “technical amendment” in the copyright royalty context. See 61 FR 63715 (Dec. 2, 1996) (in which the Library adopted a broad range of “non-substantive technical amendments” to address “identified problems” in the regulations governing CARP proceedings).

where higher royalty payments are more likely for record companies. Ford Second Corrected WDT at 19–21, SX Trial Ex. 79.

The current PSS rate is not a market rate, so market forces cannot be presumed to determine the maximum amount of product availability consistent with the efficient use of resources. See SDARS-I, 73 FR 4094. However, the testimony demonstrates that Music Choice has not, under the current rate, reduced its music offerings or contemplated exiting the business; in fact, it will be expanding its channel offerings in the near term. Del Beccaro Corrected WDT at 3, 24, PSS Trial Ex. 1; see also 6/11/12 Tr. 1460:21–1461:1 (Del Beccaro). The Judges find no *credible* evidence in the record to suggest that the output of music from record labels has been impacted negatively as a result of the current rate. The record shows no persuasive evidence that a higher PSS royalty rate would necessarily result in increased output of music by the record companies, nor that a lower rate would necessarily further stimulate Music Choice's current and planned offerings. In sum, the policy goal of maximizing creative works to the public is reasonably reflected in the current rate and, therefore, no adjustment is necessary.

[Similarly, the Judges' conclusion with respect to the first Section 801(b) factor is unchanged even when weighed against the modest increases to 8.0% for 2013 and to 8.5% for 2014 through 2017 that the Judges adopt for the upcoming rate period. Given the Judges' determination on other grounds to increase the rate by only one percentage point above the current statutory rate (phased in over the first two years of the rate period), the Judges find that that minimal increase will not adversely affect Music Choice's planned expansion nor will it provide a material incentive to artists and record companies sufficient to impact the availability of creative works to the public. In sum, the modest increase ordered by the Judges is in concert with the policy objective of maximizing the availability of creative works to the public. No adjustment, either upward or downward, is warranted by this factor.]

*b. Afford Fair Return/Fair Income Under Existing Market Conditions*

Music Choice submits that the Judges need not worry about the impact of a low royalty rate on the fair return to record companies and artists for use of their works because royalties from the PSS market are so small as to be virtually inconsequential to companies

whose principal business is the sale of CDs and digital downloads. Music Choice PFF ¶¶ 420–430. With respect to Music Choice's ability to earn a fair income, however, Music Choice argues that it is not profitable under the current 7.5% rate. Mr. Del Beccaro testified that its average revenue per customer for its residential audio business has been on the decline since the early 1990's, down from \$1.00 per customer/per month to [REDACTED] per customer/per month currently. Del Beccaro Corrected WDT at 40, PSS Trial Ex. 1. He further testified that after 15 years of paying a PSS statutory rate between 6.5% and 7.5% Music Choice has not become profitable on a cumulative basis and is not projected to become so within the foreseeable future. *Id.* at 42. Music Choice represents that it has a cumulative loss at the end of 2011 of [REDACTED], projected to grow to [REDACTED] in 2012 and continue to increase throughout the 2013–17 license period. Del Beccaro Corrected WRT at MC 69 at 1 and MC 70 at 1, PSS Trial Ex. 21. These losses lead Music Choice to conclude that it has not generated a reasonable return on capital under the existing rates. Music Choice PFF ¶¶ 442–43.

Music Choice's claims of unprofitability under the existing PSS rate come from the oblique presentation of its financial data and a combining of revenues and expenses from other aspects of its business. The appropriate business to analyze for purposes of this proceeding is the residential audio service offered by Music Choice, the subject of the Section 114 license. Music Choice, however, reports costs and revenues for its residential audio business with those of its commercial business, which is not subject to the statutory license. This aggregation of the data, which Music Choice acknowledges cannot be disaggregated, see 6/11/12 Tr. 1572:3–1576:2 (Del Beccaro), masks the financial performance of the PSS business. As a consolidated business, Music Choice has had significantly positive operating income between 2007 and 2011 and made profit distributions to its partners since 2009. Ford Amended/Corrected WRT at SX Ex. 362–RR, p. 3 (PSS\_002739), SX Trial Ex. 244; SX Trial Ex. 64 at 3 (PSS\_002715); SX Trial Ex. 233 at 3 (PSS\_366020). Dr. Crawford's effort to extract costs and revenues from this data for the PSS service alone for use in his surplus analysis cannot be credited because of his lack of familiarity with the data's source. 6/13/12 Tr. 1890:15–1891:10

(Crawford).<sup>4</sup> The Judges find no persuasive evidence to suggest that Music Choice has not operated successfully and received a fair income under the existing statutory rate, [nor any to suggest that Music Choice would not continue to do so under a rate that was modestly above the current rate (i.e., the 8.0% (2013) and 8.5% (2014–2017) rates that the Judges adopt for the upcoming rate period)].<sup>5</sup>

With respect to fair return to the copyright owner, the Judges' examination is whether the existing statutory rate has produced a fair return with respect to the usage of sound recordings. During the current licensing period, Music Choice provided 46 channels of music programming. Music Choice plans to expand the number of music channels it provides dramatically in the coming licensing term, however, up to 300 channels by the first quarter of 2013. Del Beccaro Corrected WDT at 3–4, PSS Trial Ex. 1; 6/11/12 Tr. 1490:8–16 (Del Beccaro). This expansion will result in a substantial increase in the number of plays of music by Music Choice, even if the ultimate listenership intensity of its licensees' subscribers cannot be measured. Music Choice provided no evidence, however, to suggest that the planned expansion in usage would result in increased revenues to which the statutory royalty rate is to be applied. Indeed, Music Choice has declared itself to be in a mature market with no expectation of increasing profits. 8/16/12 Tr. 3855:17–3856:7 (Del Beccaro).

Music Choice presented no evidence to suggest that copyright owners would be compensated for the increased usage of their works. Dramatically expanded usage without a corresponding expectation of increased compensation suggests an upward adjustment to the existing statutory rate is warranted. Measurement of the adjustment is not without difficulty because any downstream increases in listenership of subscribers as a result of additional music offerings by Music Choice cannot be readily predicted. It is possible that listenership overall may remain

<sup>4</sup> Much was made in the hearing and in closing arguments regarding Dr. Crawford's supposed use of audited financial data and Dr. Ford's use of unaudited financial data in an effort to examine costs and revenues of the PSS service vis-à-vis Music Choice's other non-PSS services. The Judges see no superiority to either data set as presented in this proceeding.

<sup>5</sup> It is improbable that Music Choice would continue to operate for over 15 years with the considerable losses that it claims. [It is equally improbable that Music Choice would elect to incur the additional costs of adding more music channels unless it anticipated some additional revenue from the expanded service.]

constant despite the availability of several additional music channels. It is more likely, however, that Music Choice would not make the expansion, and incur the additional expense of doing so, without reasonable expectation that subscribers or advertisers would be more attracted to the expanded offerings, although the Judges have no evidence to suggest that the net increase in listenership (or advertising revenue) would be anything more than modest.

SoundExchange refers to prior rate decisions and the application of the fair return/fair income factor by the Judges and their predecessors. SoundExchange asserts that the Judges are looking for a fair return/fair income result that is consistent with reasonable market incomes. SX PFF at ¶ 491, citing SDARS–1, 73 FR 4080, 4095 (Jan. 24, 2008). Referring to testimony by Messrs. Ciongoli and Van Arman, SoundExchange emphasizes how vital statutory royalty income is to copyright owners—both the record labels and the artists, whose share SoundExchange distributes directly. See 6/13/12 Tr. 2138:5–2142:9 (Ciongoli), Van Arman WDT at 4, SX Trial Ex. 77. Although the income from any one statutory license may not be great, SoundExchange cites the aggregate value of income from all of the statutory licenses as vital to the industry. With respect to fair income to the rights user, SoundExchange points to the profit on the consolidated financial statements of Music Choice over the past five years, 2007–2011.

The balance of fair return and fair income appears to have been maintained at the current PSS rates. This factor does not argue in favor of drastic cuts or increases in the current rate. Music Choice's planned increase in usage, however, argues in favor of an increase in the rates going forward to fairly compensate the licensors for the additional performances.

The Judges determine, therefore, that a 1% upward adjustment of the benchmark (from 7.5% to 8.5% of Gross Revenues), phased in during the early part of the licensing period, is appropriate to serve the policy of fair return/fair income. [Because the increase is modest and phased in over the first two years of the rate period, the Judges do not believe that the adjusted rates will negatively impact Music Choice's ability to earn a fair income.]

#### *c. Weigh the Relative Roles of Copyright Owners and Copyright Users*

This policy factor requires that the rates the Judges adopt reflect the relative roles of the copyright owners and copyright users in the product made available with respect to relative

creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of markets for creative expression and media for their communication. Music Choice argues that its creative and technological contributions, and capital investments, outweigh those of the record companies. First, Music Choice touts the graphic and informational improvements made to its on-screen channels, noting that what were once blank screens now display significant artist and music information. According to Music Choice, costs for these improvements have exceeded [REDACTED]. Del Beccaro Corrected WDT at 31–32, PSS Trial Ex. 1. Second, Music Choice offers increases in programming, staff size and facilities, along with enhancements to product development and infrastructure. Music Choice estimates that costs for these improvements have exceeded [REDACTED]. Id. Regarding costs and risks, Music Choice points to its lack of profitability and the exit of other PSS from the market as evidence of its continued risk and limited opportunity for profit. Music Choice PFF ¶¶ 512–520. Finally, with respect to opening new markets, Music Choice touts the PSS market itself for which it remains the standard-bearer in disseminating music to the public through cable television. Id. at ¶ 523.

SoundExchange offers little more on the third Section 801(b) factor beyond Dr. Ford's contention that he saw no evidence to support that Music Choice makes contributions to creativity or availability of music that are beyond those of the music services he included in his benchmarks, and therefore, according to Dr. Ford, the third factor is accounted for in the market. Ford Second Corrected WDT at 21, SX Trial Ex. 79; 6/18/12 Tr. 2849:10–16 (Ford).

In considering the third factor, the Judges' task is not to determine who individually bears the greater risk, incurs the higher cost or makes a greater contribution in the PSS market, and then make individual up or down adjustments to the selected rate based upon some unspecified quantification. Rather, the consideration is whether these elements, taken as a whole, require adjustment to the Judges' selected benchmark rate of 7.5% [(or to the modestly increased rates of 8.0% and 8.5% that the Judges found warranted under the second Section 801 factor discussed above)]. Upon careful weighing of the evidence, the Judges determine that no adjustment is necessary [under the current statutory rate or under the modestly increased

rates that the Judges have selected for the upcoming rate period].

Music Choice's investments in programming offerings, staff, and facilities, and other related products and services are no doubt impressive, but they have been accomplished under the current rate. As discussed above, Music Choice has already begun to expand its channel offerings and has allocated greater financial resources to its residential audio business. All of these undertakings, plus the investments made and costs incurred to date have been made under the existing rate, and the Judges have no persuasive evidence to suggest that these contributions have not been accounted for in the current rate. [Moreover, the Judges find no evidence to suggest that the modest increase to 8.5% (phased in over the first two years of the rate period) that the Judges adopt will negatively impact Music Choice's continued operations in a material way.]

On the other side of the ledger, SoundExchange has not offered any persuasive evidence that the existing rate has prevented the music industry from making significant contributions to or investments in the PSS market or that those contributions are not already accounted for in the current rate. [The modest increases that the Judges adopt would make any such argument even less persuasive.] Therefore, no adjustment[, either upward or downward, from the 8.0% and 8.5% rates that the Judges adopt] is warranted under this factor.

#### *d. Minimize Disruptive Impact*

Of the four Section 801(b) factors, the parties devoted most of their attention to the last one: minimizing disruption on the structure of the industries and on generally prevailing industry practices. This is perhaps not surprising, given the role this factor played in SDARS–I in adjusting the benchmark rates upon which the Judges relied to set the royalty fees. See SDARS–I, 73 FR at 4097–98. [The Judges' analysis of the disruption factor is confined to the current statutory rate of 7.5% and to the phased-in rate of 8.5% (including the 8.0% rate for the first year of the rate period) that the Judges found warranted under the second Section 801(b) factor, discussed above.]

SoundExchange argues that the current rate is disruptive to the music industry. Dr. Ford testified that “the current practice of applying an exceedingly low rate to deflated revenues is disruptive of industry structure, especially where there are identical services already paying a higher rate.” Ford Second Corrected

WDT at 23, SX Trial Ex. 79. This results, according to Dr. Ford, in a tilting of the competitive field for music services in favor of Music Choice, thereby disrupting the natural evolution of the music delivery industry. Dr. Ford, however, concedes that the PSS market has unique and distinctive features that distinguish it from other types of music services, thereby substantially reducing the likelihood that the PSS and other music services would be viewed as substitutes for one another. Further, Dr. Ford failed to present any empirical evidence demonstrating a likelihood of migration of customers from music services paying higher royalty fees to the PSS as a result of his perceived royalty imbalance. Dr. Ford's conclusion that the current rate paid by the PSS for the Section 114 license has caused a disruption to the music industry (or would likely do so in the upcoming license period) is mere conjecture.

Music Choice also contends that the current rate is disruptive. The Judges find its argument weak and unsubstantiated. The test for determining disruption to an industry, announced by the Judges in SDARS-I, is whether the selected rate directly produces an adverse impact that is substantial, immediate, and irreversible in the short-run. SDARS-I, 73 FR 4097. The current rate has been in place for some time and, despite Music Choice's protestations that it has never been profitable, it continues to operate and continues to increase its expenditures by expanding and enhancing its services in the face of the supposedly disruptive current royalty rate. Music Choice's argument that DMX's bankruptcy and Muzak's decision to limit its participation in the PSS market are evidence of the onerous burden of the current rate are without support. Music Choice has failed to put forward any evidence demonstrating a causal relationship between the actions of those services and the current PSS royalty rate. In sum, the Judges are not persuaded by the record testimony or the arguments of the parties that the current PSS rate is disruptive to a degree that would warrant an adjustment, either up or down.

[The modest, phased-in increase to 8.5% that the Judges adopt does nothing to change this conclusion. Neither SoundExchange nor Music Choice

presented any credible evidence to suggest that the adjusted rates of 8.0% and 8.5% that the Judges adopt would directly produce an adverse impact that is substantial, immediate, and irreversible in the short-run. Therefore, the Judges find that no adjustment to the adopted rates is warranted under the fourth Section 801(b) factor.]

*So ordered.*

**Suzanne M. Barnett,**  
*Chief Copyright Royalty Judge.*

**Richard C. Strasser,**  
*Copyright Royalty Judge.*

Dated: April 30, 2013.

#### **Dissenting Opinion of Copyright Royalty Judge Roberts**

For the second time in this proceeding, the majority alters its evaluation of the evidence and explanation of its reasoning in determining royalty rates,<sup>6</sup> this time under the rubric of 17 U.S.C. 803(c)(4). The majority's amendments do not comply with the terms and conditions of that section; and no other provision in the statute grants authority, at this stage of the proceeding, for making them.

Section 803(c)(4) of the Copyright Act, 17 U.S.C., entitled "Continuing Jurisdiction," states that "The Copyright Royalty Judges may issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination." This provision and Section 803(c)(2), regarding motions for rehearing, are the only grants of authority for altering or amending written determinations. The language of Section 803(c)(4) is very precise. Amendments can be made to a determination only if (1) they are "technical" or "clerical"; and (2) they are in response to unforeseen circumstances that would frustrate the proper implementation of such determination. The majority's issuance

<sup>6</sup> The first alteration in the reasoning supporting the majority's determination of royalty rates occurred in its denial of the motions for rehearing filed by SoundExchange, Inc. and Sirius XM. See Order Denying Motions for Rehearing, Docket No. 2011-1 CRB PSS/Satellite II (Jan. 30, 2013).

of amendments here fails on both accounts. First, the amendments are in no way "technical" or "clerical." The majority reconsiders both its evidentiary and legal analysis of the Section 801(b) factors as applied to the preexisting subscription services ("PSS") in light of the Register of Copyrights' finding of legal error in the majority's analysis. Review of Copyright Royalty Judges Determination, Notice, 78 FR 22913 (Apr. 17, 2013). Recasting evidentiary and legal analysis is by no means "technical" or "clerical," and I can find nothing in either the plain language of Section 804(c)(4) or its legislative history that supports such a classification.

Furthermore, even if the majority is accurate in its conclusion that the amendments to the written determination are "technical," the amendments do not satisfy the second criterion of Section 803(c)(4), which is that they can be made only if the "proper implementation of such determination" would be frustrated without them.<sup>7</sup> The majority's amendments are not at all necessary to the implementation of PSS rates, for they do not change them (which Section 804(c)(4) expressly forbids) nor do they alter, correct, or clarify any of the terms or conditions of payment or reporting. What the amendments do seek to accomplish is to bolster the legal rationale behind the choice of the rates, presumably to raise the chances of success of the determination on appeal. This is not a permitted or intended purpose for making amendments under Section 803(c)(4), and the majority is without authority to make them. I, therefore, dissent.

Dated: April 30, 2013

William J. Roberts, Jr.,

*Copyright Royalty Judge.*

Dated: April 30, 2013

Suzanne M. Barnett,

*Chief Copyright Royalty Judge.*

Approved by:

James H. Billington,

*Librarian of Congress.*

[FR Doc. 2013-12493 Filed 5-24-13; 8:45 am]

**BILLING CODE 1410-72-P**

<sup>7</sup> The majority provides no discussion or analysis of this criterion.

# Proposed Rules

Federal Register

Vol. 78, No. 102

Tuesday, May 28, 2013

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 732 and Chapter IV

## OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

### 5 CFR Chapter IV

RIN 3206-AM73

### Designation of National Security Positions in the Competitive Service, and Related Matters

**AGENCY:** Office of Personnel Management; Office of the Director of National Intelligence.

**ACTION:** Proposed rule and withdrawal of prior proposed rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) and the Office of the Director of National Intelligence (ODNI) are proposing to issue regulations regarding designation of national security positions in the competitive service, and related matters. This proposed rule is one of a number of initiatives OPM and ODNI have undertaken to simplify and streamline the system of Federal Government investigative and adjudicative processes to make them more efficient and equitable. The purpose of this revision is to clarify the requirements and procedures agencies should observe when designating, as national security positions, positions in the competitive service, positions in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and career appointments in the Senior Executive Service within the executive branch, pursuant to Executive Order 10450, Security Requirements for Government Employment.

**DATES:** OPM and ODNI will consider comments on this proposed rule received on or before June 27, 2013. Effective May 28, 2013, the proposed rule published December 14, 2010, at 75 FR 77783, is withdrawn.

**ADDRESSES:** You may submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this proposed rulemaking.

You may also send, deliver, or fax comments to Kimberly Holden, Deputy Associate Director for Recruitment and Hiring, U.S. Office of Personnel Management, Room 6566, 1900 E Street NW., Washington, DC 20415-9700; email at [employ@opm.gov](mailto:employ@opm.gov); or fax at (202) 606-2329.

**FOR FURTHER INFORMATION CONTACT:** Linda Watson by telephone on (202) 606-1252, by fax at (202) 606-4430, by TTY at (202) 418-3134, or by email at [Linda.Watson@opm.gov](mailto:Linda.Watson@opm.gov) or Teresa Nankivell, Office of the Director of National Intelligence, Office of the National Counterintelligence Executive, phone 571-204-6623, fax to 571-204-6592, email [teresabn@dni.gov](mailto:teresabn@dni.gov).

**SUPPLEMENTARY INFORMATION:** On December 14, 2010, the U.S. Office of Personnel Management (OPM) issued a proposed rule in 75 FR 77783 to amend part 732 of title 5, Code of Federal Regulations (CFR), to clarify its coverage, and the procedural requirements for making position sensitivity designations. OPM also proposed various revisions to make the regulations more readable. This proposed rule replaces OPM's proposed rule at 75 FR 77783 (Dec. 14, 2010), which is withdrawn.

In a Memorandum dated January 25, 2013, and published in the **Federal Register** at 78 FR 7253 on January 31, 2013, the President directed that "[t]he Director of National Intelligence and the Director of the Office of Personnel Management shall jointly propose the amended regulations contained in the Office of Personnel Management's notice of proposed rulemaking in 75 FR 77783 (Dec. 14, 2010), with such modifications as are necessary to permit their joint publication, without prejudice to the authorities of the Director of National Intelligence and the Director of the Office of Personnel Management under any executive order, and to the extent permitted by law."

Accordingly, the proposed rule issued by OPM on December 14, 2010 (75 FR 77783) is withdrawn, and, with the exception of section 732.401, OPM and

ODNI are jointly reissuing and renumbering the proposed rule in a new chapter IV, part 1400 of title 5, Code of Federal Regulations. OPM will separately reissue as a final rule § 732.401, concerning OPM's responsibility to make reemployment eligibility determinations under 5 U.S.C. 7312, 10 U.S.C. 1609(d), and section 7 of E.O. 10450, as amended.

The following sections of the joint proposed rule differ from the corresponding sections of the December 14, 2010 proposed rule:

The Authority Citation has been revised to add a reference to 50 U.S.C. 435b and a **Federal Register** citation to the President's Memorandum.

Section 1400.103, formerly § 732.103, has been revised to allow OPM and ODNI to jointly issue standards, procedures, and guidance to implement the rule.

Section 1400.201(a)(2)(v), formerly § 732.201(a)(2)(v), has been revised to clarify that "critical-sensitive" positions include positions involving national security adjudicative determinations generally, not just security clearance adjudications.

Section 1400.201(b) and (c), formerly § 732.201(b) and (c), have been revised and a new paragraph (d) added to clarify that in certain circumstances a position sensitivity designation under this part may automatically carry with it, without further agency action, a risk designation under part 731 of this chapter (see 5 CFR 731.106). This change was intended only to streamline the suitability and security designation processes to the greatest extent practicable. Determinations regarding suitability and determinations regarding eligibility to hold a sensitive position are governed by distinct standards. The administrative processes that may be applicable to each determination are also distinct. The requirement that all positions receiving a position sensitivity designation under this part shall also receive a risk designation under part 731 of this chapter does not confer, and is not intended to confer, any new or additional rights of appeal upon employees or prospective employees who have been subjected to a personnel action that was based on a determination that they lack eligibility to hold a sensitive position.

Technical changes have also been made to § 1400.201 to use terms and punctuation consistently.

Section 1400.202(c), formerly § 732.202(c), has been revised to clarify that OPM's authority under Executive Order 10450, as amended, to grant waivers from, and exceptions to investigative requirements, does not include the authority to waive investigative requirements for eligibility for access to classified information, and does not affect ODNI's authority to prescribe standards for temporary eligibility for access to classified information.

Section 1400.301, formerly § 732.301, has been revised to state that certain procedural and recordkeeping requirements must be followed "subject to requirements of law, rule, regulation or Executive order," and to renumber the text.

Members of the public need not resubmit previously submitted comments on aspects of the joint proposed rule that are unchanged from the December 14, 2010 proposed rules. In the final rule, OPM and ODNI will fully address the comments received on the corresponding provisions of the December 14, 2010 proposed rule, including any changes in the final rule made as a result of the comments. In the final rule, OPM and ODNI will also fully address the comments received in response to this notice of proposed rulemaking.

#### Regulatory Flexibility Act

OPM and ODNI certify that this rule will not have a significant economic impact on a substantial number of small entities because the rules pertain only to Federal employees and agencies.

#### E.O. 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### E.O. 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

#### E.O. 12988, Civil Justice Reform

This rule meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Congressional Review Act

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

#### List of Subjects

##### 5 CFR Part 732

Administrative practices and procedures, Government employees.

##### 5 CFR Part 1400

Administrative practices and procedures, Classified information, Government employees, Investigations, U.S. Office of Personnel Management.

#### Elaine Kaplan,

*Acting Director, Office of the Director of National Intelligence*

#### James R. Clapper, Jr.,

*Director.*

Accordingly, OPM and ODNI propose to amend title 5, Code of Federal Regulations, by establishing chapter IV consisting of part 1400 to read as follows:

#### Chapter IV—Office of Personnel Management and Office of the Director of National Intelligence

#### PART 1400—DESIGNATION OF NATIONAL SECURITY POSITIONS

##### Subpart A—Scope

Sec.

1400.101 Purpose.

1400.102 Definitions and applicability.

1400.103 Implementation.

##### Subpart B—Designation and Investigative Requirements

1400.201 Sensitivity level designations and investigative requirements.

1400.202 Waivers and exceptions to preappointment investigative requirements.

1400.203 Periodic reinvestigation requirements.

1400.204 Reassessment of current positions.

1400.205 Savings provision.

#### Subpart C—Procedural Rights and Reporting

1400.301 Procedural rights.

1400.302 Reporting to OPM.

**Authority:** 5 U.S.C. 1103(a)(5), 3301, 3302, 7312; 50 U.S.C. 403, 435b; E.O. 10450, 3 CFR, 1949–1953 Comp., p. 936; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 12968, 3 CFR, 1996 Comp., p. 391; E.O. 13467, 3 CFR, 2009 Comp., p. 196; 78 FR 7253.

#### Subpart A—Scope

##### § 1400.101 Purpose.

(a) This part sets forth certain requirements and procedures which each agency shall observe for determining national security positions pursuant to Executive Order 10450—Security Requirements for Government Employment (April 27, 1953), 18 FR 2489, 3 CFR 1949–1953 Comp., p. 936, as amended.

(b) All positions must be evaluated for a position sensitivity designation commensurate with the responsibilities and assignments of the position as they relate to the impact on the national security, including but not limited to eligibility for access to classified information.

##### § 1400.102 Definitions and applicability.

(a) In this part—

*National security position* includes any position in a department or agency, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security.

(i) Such positions include those requiring eligibility for access to classified information.

(ii) Other such positions include, but are not limited to, those whose duties include:

(A) Protecting the nation, its citizens and residents from acts of terrorism, espionage, or foreign aggression, including those positions where the occupant's duties involve protecting the nation's borders, ports, critical infrastructure or key resources, and where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(B) Developing defense plans or policies;

(C) Planning or conducting intelligence or counterintelligence activities, counterterrorism activities and related activities concerned with the preservation of the military strength of the United States;

(D) Protecting or controlling access to facilities or information systems where

the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(E) Controlling, maintaining custody, safeguarding, or disposing of hazardous materials, arms, ammunition or explosives, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(F) Exercising investigative or adjudicative duties related to national security, suitability, fitness or identity credentialing, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(G) Exercising duties related to criminal justice, public safety or law enforcement, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security; or

(H) Conducting investigations or audits related to the functions described in paragraphs (ii)(B) through (G) of this paragraph (a) definition, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security.

(b) The requirements of this part apply to positions in the competitive service, positions in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and career appointments in the Senior Executive Service within the executive branch. Departments and agencies may apply the requirements of this part to other excepted service positions within the executive branch and contractor positions, to the extent consistent with law.

#### **§ 1400.103 Implementation.**

OPM and the Security Executive Agent designated pursuant to Executive Order 13467 or any successor order may set forth policies, general procedures, criteria, standards, quality control procedures, and supplementary guidance for the implementation of this part.

### **Subpart B—Designation and Investigative Requirements**

#### **§ 1400.201 Sensitivity level designations and investigative requirements.**

(a) For purposes of this part, the head of each agency must designate, or cause to be designated, a position within the department or agency as a national security position pursuant to § 1400.102(a). National security positions must then be designated, based on the degree of potential damage to the national security, at one of the following three sensitivity levels:

(1) *Noncritical-Sensitive* positions are national security positions which have the potential to cause significant or serious damage to the national security, including but not limited to:

(i) Positions requiring eligibility for access to Secret, Confidential, or "L" classified information; or

(ii) Positions not requiring eligibility for access to classified information, but having the potential to cause significant or serious damage to the national security.

(2) *Critical-Sensitive* positions are national security positions which have the potential to cause exceptionally grave damage to the national security, including but not limited to:

(i) Positions requiring eligibility for access to Top Secret or "Q" classified information;

(ii) Positions involving development or approval of war plans, major or special military operations, or critical and extremely important items of war;

(iii) National security policy-making or policy-determining positions;

(iv) Positions with investigative duties, including handling of completed counter-intelligence or background investigations, the nature of which have the potential to cause exceptionally grave damage to the national security;

(v) Positions involving national security adjudicative determinations or granting of personnel security clearance eligibility;

(vi) Positions involving duty on personnel security boards;

(vii) Senior management positions in key programs, the compromise of which could result in exceptionally grave damage to the national security;

(viii) Positions having direct involvement with diplomatic relations and negotiations;

(ix) Positions involving independent responsibility for planning or approving continuity of Government operations;

(x) Positions involving major and immediate responsibility for, and the ability to act independently without detection to compromise or exploit, the protection, control, and safety of the nation's borders and ports or immigration or customs control or policies, where there is a potential to cause exceptionally grave damage to the national security;

(xi) Positions involving major and immediate responsibility for, and the ability to act independently without detection to compromise or exploit, the design, installation, operation, or maintenance of critical infrastructure systems or programs;

(xii) Positions in which the occupants have the ability to independently

damage public health and safety with devastating results;

(xiii) Positions in which the occupants have the ability to independently compromise or exploit biological select agents or toxins, chemical agents, nuclear materials, or other hazardous materials;

(xiv) Positions in which the occupants have the ability to independently compromise or exploit the nation's nuclear or chemical weapons designs or systems;

(xv) Positions in which the occupants obligate, expend, collect or control revenue, funds or items with monetary value in excess of \$50 million, or procure or secure funding for goods and/or services with monetary value in excess of \$50 million annually, with the potential for exceptionally grave damage to the national security;

(xvi) Positions in which the occupants have unlimited access to and control over unclassified information, which may include private, proprietary or other controlled unclassified information, but only where the unauthorized disclosure of that information could cause exceptionally grave damage to the national security;

(xvii) Positions in which the occupants have direct, unrestricted control over supplies of arms, ammunition, or explosives or control over any weapons of mass destruction;

(xviii) Positions in which the occupants have unlimited access to or control of access to designated restricted areas or restricted facilities that maintain national security information classified at the Top Secret or "Q" level;

(xix) Positions working with significant life-critical/mission-critical systems, such that compromise or exploitation of those systems would cause exceptionally grave damage to essential Government operations or national infrastructure; or

(xx) Positions in which the occupants conduct internal and/or external investigation, inquiries, or audits related to the functions described in paragraphs (a)(2)(i) through (ix) of this section, where the occupant's neglect, action, or inaction could cause exceptionally grave damage to the national security.

(3) *Special-Sensitive* positions are those national security positions which have the potential to cause inestimable damage to the national security, including but not limited to positions requiring eligibility for access to Sensitive Compartmented Information (SCI), requiring eligibility for access to any other intelligence-related Special Sensitive information, requiring involvement in Top Secret Special Access Programs (SAP), or positions

which the agency head determines must be designated higher than Critical-Sensitive consistent with Executive order.

(b) OPM issues, and periodically revises, a Position Designation System which describes in greater detail agency requirements for designating positions that could bring about a material adverse effect on the national security. Agencies must use the Position Designation System to designate the sensitivity level of each position covered by this part. All positions receiving a position sensitivity designation under this part shall also receive a risk designation under 5 CFR part 731 (see 5 CFR 731.106) as provided in paragraphs (c) and (d) of this section.

(c) Any position receiving a position sensitivity designation under this part at the critical-sensitive or special-sensitive level shall automatically carry with that designation, without further agency action, a risk designation under 5 CFR 731.106 at the high level.

(d) Any position receiving a position sensitivity designation at the noncritical-sensitive level shall automatically carry with that designation, without further agency action, a risk designation under 5 CFR 731.106 at the moderate level, unless the agency determines that the position should be designated at the high level. Agencies shall designate the position at the high level where warranted on the basis of criteria set forth in OPM issuances as described in § 731.102(c).

**§ 1400.202 Waivers and exceptions to preappointment investigative requirements.**

(a) *Waivers*—(1) *General*. A waiver of the preappointment investigative requirement contained in section 3(b) of Executive Order 10450 for employment in a national security position may be made only for a limited period:

(i) In case of emergency if the head of the department or agency concerned finds that such action is necessary in the national interest; and

(ii) When such finding is made a part of the records of the department or agency.

(2) *Specific waiver requirements*. (i) The preappointment investigative requirement may not be waived for appointment to positions designated Special-Sensitive under this part.

(ii) For positions designated Critical-Sensitive under this part, the records of the department or agency required by paragraph (a)(1) of this section must document the decision as follows:

(A) The nature of the emergency which necessitates an appointment

prior to completion of the investigation and adjudication process;

(B) A record demonstrating the successful initiation of the required investigation based on a completed questionnaire; and

(C) A record of the Federal Bureau of Investigation fingerprint check portion of the required investigation supporting a preappointment waiver.

(iii) When a waiver for a position designated Noncritical-Sensitive is granted under this part, the agency head will determine documentary requirements needed to support the waiver decision. In these cases, the agency must favorably evaluate the completed questionnaire and initiate the required investigation. The required investigation must be initiated within 14 days of placing the individual in the position.

(iv) When waiving the preappointment investigation requirements, the applicant must be notified that the preappointment decision was made based on limited information, and that the ultimate appointment decision depends upon favorable completion and adjudication of the full investigative results.

(b) *Exceptions to investigative requirements*. Pursuant to section 3(a) of E.O. 10450, as amended, upon request of an agency head, the Office of Personnel Management may, in its discretion, authorize such less investigation as may meet the requirement of national security with respect to:

(1) Positions that are intermittent, seasonal, per diem, or temporary, not to exceed an aggregate of 180 days in either a single continuous appointment or series of appointments; or

(2) Positions filled by aliens employed outside the United States.

(c) *Applicability*. This section does not apply to:

(1) Investigations, waivers of investigative requirements, and exceptions from investigative requirements under 42 U.S.C. 2165(b);

(2) Investigative requirements for eligibility for access to classified information under Executive Order 12968, as amended; or

(3) Standards for temporary eligibility for access to classified information established by the Security Executive Agent pursuant to section 3.3(a)(2) of Executive Order 12968, as amended.

**§ 1400.203 Periodic reinvestigation requirements.**

(a) The incumbent of a national security position requiring eligibility for access to classified information is subject to the reinvestigation

requirements of E.O. 12968, as amended.

(b) The incumbent of a national security position that does not require eligibility for access to classified information is subject to periodic reinvestigation at least once every five years. Such reinvestigation must be conducted using a national security questionnaire, and at a frequency and scope that will satisfy the reinvestigation requirements for both national security and public trust positions.

**§ 1400.204 Reassessment of current positions.**

(a) Agency heads must assess each position covered by this part within the agency using the standards set forth in this regulation as well as guidance provided in OPM issuances to determine whether changes in position sensitivity designations are necessary within 24 months of [EFFECTIVE DATE OF THE FINAL RULE].

(b) Where the sensitivity designation of the position is changed, and requires a higher level of investigation than was previously required for the position,

(1) The agency must initiate the investigation no later than 14 working days after the change in designation, and

(2) The agency will determine whether the incumbent's retention in sensitive duties pending the outcome of the investigation is consistent with the national security.

(c) Agencies may provide advance notice of the redesignation of a position to allow time for completion of the forms, releases, and other information needed from the incumbent to initiate the investigation.

**§ 1400.205 Savings provision.**

No provision of the rule in this part shall be applied in such a way as to affect any administrative proceeding pending on the effective date of the final regulation. An administrative proceeding is deemed to be pending from the date of the agency or OPM notice described in § 1400.301(c)(1).

**Subpart C—Procedural Rights and Reporting**

**§ 1400.301 Procedural rights.**

When an agency makes an adjudicative decision based on an OPM investigation, or when an agency, as a result of information in an OPM investigation, changes a tentative favorable placement or clearance decision to an unfavorable decision, the agency must comply with all applicable administrative procedural requirements, as provided by law, rule, regulation, or

Executive order, including E.O. 12968, as amended, and the agency's own procedural regulations, and must:

(a) Ensure that the records used in making the decision are accurate, relevant, timely, and complete to the extent reasonably necessary to assure fairness to the individual in any determination;

(b) Consider all available, relevant information in reaching its final decision; and

(c) At a minimum, subject to requirements of law, rule, regulation, or Executive order:

(1) Provide the individual concerned notice of the specific reason(s) for the decision, an opportunity to respond, and notice of appeal rights, if any; and

(2) Keep any record of the agency action required by OPM as published in its issuances.

#### § 1400.302 Reporting to OPM.

(a) Each agency conducting an investigation under E.O. 10450 is required to notify OPM when the investigation is initiated and when it is completed.

(b) Agencies must report to OPM an adjudicative determination and action taken with respect to an individual investigated pursuant to E.O. 10450 as soon as possible and in no event later than 90 days after receipt of the final report of investigation.

(c) To comply with process efficiency requirements, additional data may be collected from agencies conducting investigations or taking action under this part. These collections will be identified in separate OPM guidance, issued as necessary under 5 CFR 732.103.

[FR Doc. 2013-12556 Filed 5-23-13; 11:15 am]

BILLING CODE 6325-39-P; 3910-A7-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No.: FAA-2013-0142; Notice No. 25-139]

RIN 2120-AK12

#### Harmonization of Airworthiness Standards—Gust and Maneuver Load Requirements

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to amend certain airworthiness regulations for

transport category airplanes based on recommendations from the Aviation Rulemaking Advisory Committee (ARAC). Adopting this proposal would eliminate certain regulatory differences between the airworthiness standards of the FAA and European Aviation Safety Agency (EASA) without affecting current industry design practices. This action would revise the pitch maneuver design loads criteria; revise the gust and turbulence design loads criteria; revise the application of gust loads to engine mounts, high lift devices, and other control surfaces; add a "round-the-clock" discrete gust criterion and a multi-axis discrete gust criterion for airplanes equipped with wing-mounted engines; revise the engine torque loads criteria; add an engine failure dynamic load condition; revise the ground gust design loads criteria; revise the criteria used to establish the rough air design speed, and require the establishment of a rough air Mach number.

**DATES:** Send comments on or before August 26, 2013.

**ADDRESSES:** Send comments identified by docket number FAA-2013-0142 using any of the following methods:

- *Federal eRulemaking 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 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at (202) 493-2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*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 dockets, 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:** For technical questions concerning this action, contact Todd Martin, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone (425) 227-1178; facsimile (425) 227-1232; email [Todd.Martin@faa.gov](mailto:Todd.Martin@faa.gov).

For legal questions concerning this action, contact Sean Howe, Office of the Regional Counsel, ANM-7, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2591; facsimile (425) 227-1007; email [Sean.Howe@faa.gov](mailto:Sean.Howe@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General Requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority. It prescribes new safety standards for the design and operation of transport category airplanes.

##### I. Overview of Proposed Rule

The FAA proposes to amend the airworthiness regulations described below. This action would harmonize Title 14, Code of Federal Regulations (14 CFR) part 25 requirements with the corresponding requirements in Book 1 of EASA Certification Specifications and Acceptable Means of Compliance for Large Aeroplanes (CS-25).

The following proposals result from ARAC recommendations made to the FAA and EASA:

1. Amend § 25.331, "Symmetric maneuvering conditions;"

2. Amend § 25.341, “Gust and turbulence loads;”
3. Amend § 25.343, “Design fuel and oil loads;”
4. Amend § 25.345, “High lift devices;”
5. Amend § 25.361, “Engine torque;”
6. Add § 25.362, “Engine failure loads;”
7. Amend § 25.371, “Gyroscopic loads;”
8. Amend § 25.373, “Speed control devices;”
9. Amend § 25.391, “Control surface loads: General;”
10. Amend § 25.395, “Control system;”
11. Amend § 25.415, “Ground gust conditions;”
12. Amend § 25.1517, “Rough air speed,  $V_{RA}$ ;”
13. Remove appendix G, “Continuous Gust Design Criteria.”

## II. Background

Part 25 prescribes airworthiness standards for type certification of transport category airplanes for products certified in the United States. EASA CS-25 Book 1 prescribes the corresponding airworthiness standards for products certified in Europe. While part 25 and CS-25 Book 1 are similar, they differ in several respects. To improve certification efficiency, the FAA tasked ARAC through the Loads and Dynamics Harmonization Working Group (LDHWG) to review existing structures regulations and recommend changes that would eliminate differences between the U.S. and European airworthiness standards, while maintaining or improving the level of safety in the current regulations.

All of the proposals below are based on LDHWG recommendations, which EASA has already incorporated into CS-25 Book 1. The FAA agrees with the ARAC recommendations as adopted by EASA, and we propose to amend part 25 accordingly. The proposals are not expected to be controversial and should reduce certification costs to industry without adversely affecting safety. The complete analyses for the proposed changes made in response to ARAC recommendations can be found in the ARAC recommendation reports, located in the docket for this rulemaking.

**Note:** In most cases, the language and diagrams in this proposed rule are similar to related rules found in CS-25, Book 1 with one exception: The FAA uses the term “flight deck” where EASA uses the term “cockpit.” The meaning and intent of these terms are the same.

## III. Discussion of the Proposal

### A. Revise “Symmetric Maneuvering Conditions” (§ 25.331)

Section 25.331(c)(2) currently prescribes a checked pitching maneuver (a design load condition) in which the flight deck pitch control is first displaced in a nose-up direction, then the control is displaced in the opposite direction sufficient to “check” the pitching motion. The control displacements must develop specified nose-up and nose-down pitching accelerations. The pitching accelerations prescribed in the current regulations do not account for the size, configuration, or characteristics of the airplane. Also, the current regulations do not fully account for the characteristics of advanced electronic flight control systems in which the achievable maneuvering load factors are governed by computer control laws.

We propose to revise § 25.331(c)(2) based on the recommendation from the LDHWG. The proposed requirement would prescribe both positive and negative checked pitch maneuver loads that take into account the size of the airplane and any effects of the flight control system. We would also revise the introductory paragraph, § 25.331(c), by moving some criteria to § 25.331(c)(2) where those criteria apply.

The LDHWG recommended a checked pitching maneuver requirement that was based on the corresponding requirement in the former Joint Aviation Regulations (JAR) but with some modifications to account for advanced flight control systems. The proposal specifies a control input in the form of a sine wave as a baseline control motion. This control motion is applied with the initial movement in the nose-up direction so that the maximum positive limit maneuvering load factor is achieved. As a separate condition, the control motion is applied with the initial movement in the nose-down direction, so that a maneuvering load factor of 0g is reached. In both cases, the control motion is applied at a frequency related to the short-period rigid body mode of the airplane. The short-period rigid body mode is one of the two longitudinal stability modes that are inherent in every airplane and identified during the design phase.

In cases where the load factors are not achievable with a simple sine wave using amplitude that fits within the limits of the control stops or the pilot effort limits, a modified sine wave within these limits is required with a dwell at the maximum control displacement. The time delay is varied to the extent necessary to achieve the

specified load factors up to a maximum time beyond which the maneuver would no longer be considered rational.

These actions would harmonize § 25.331 with the corresponding EASA standards.

### B. Revise “Gust and Turbulence Loads” (§ 25.341) and “Continuous Gust Design Criteria” (Appendix G to Part 25)

Section 25.341 requires that the airplane be designed for gust and turbulence loads. These loads are currently specified in § 25.341(a) Discrete Gust Design Criteria (representing a singular gust), and § 25.341(b) Continuous Gust Design Criteria (representing continuous turbulence). Section 25.341(b) references the continuous gust criteria specified in appendix G of part 25 and requires that these criteria be used for the evaluation of continuous turbulence. We propose to:

1. Remove appendix G and specify the continuous turbulence requirement directly in § 25.341(b); and remove the optional mission analysis method currently specified in appendix G in favor of the design envelope analysis method.

The elimination of the optional mission analysis method would not be significant since few manufacturers currently use it as the primary means of addressing continuous turbulence. The LDHWG determined that predicting the mission is not always reliable since missions can change after the airplane goes into operation. Furthermore, the mission analysis design loads are sensitive to small changes in the definition of the aircraft mission. Therefore, small variations in approach can provide inconsistent results. The elimination of the mission analysis method leaves only the design envelope analysis method.

2. Revise the turbulence intensity criteria in § 25.341(b) to take into account in-service measurements of derived gust intensities.

The FAA and other organizations have endeavored to better define the atmospheric model to be used for gust and turbulence loads. The Civil Aviation Authority (CAA) of the United Kingdom conducted a comprehensive gust measurement program for transport airplanes in airline service. The program, called Civil Aircraft Airworthiness Data Recording Program (CAADRP), resulted in an extensive collection of reliable gust data that provided an improved insight into the distribution of gusts in the atmosphere. The FAA already revised § 25.341(a) (Amendment 25-86, 61 FR 5218, dated February 9, 1996) to provide a revised

discrete gust methodology along with a refined gust distribution model of the atmosphere based on the CAADRP data. The FAA proposes to retain the design envelope criterion and prescribe the gust intensity distribution based on the CAADRP data. In addition, the flight profile alleviation factor already defined for the discrete gust in § 25.341(a) would be used to adjust the gust intensity distribution according to certain aircraft parameters that relate to the intended use of the airplane. The FAA considers this to be a reliable and uniform means of accounting for airplane mission.

The introduction of advanced flight control systems into transport airplanes has presented special problems in the treatment of continuous turbulence. Some of these systems can exhibit significant non-linearities, while the standard mathematical approaches to continuous turbulence (i.e., frequency domain solutions) are valid only for linear systems. The proposed rule would require that any significant non-linearity be considered in a realistic or conservative manner.

3. Revise § 25.341(a) to require evaluation of discrete gust conditions at airplane speeds from  $V_B$  to design cruising speed,  $V_C$ , (currently required only at  $V_C$ ) and to expand the definition of gust speeds up to 60,000 feet (currently defined up to 50,000 feet).

The change to the discrete gust criteria is necessary to ensure airplanes are designed to withstand gust loads at lower speeds and is consistent with the proposed continuous turbulence criteria.

Some current part 25 airplanes have maximum certified operating altitudes up to 51,000 feet. To be fully applicable to these and future part 25 airplanes, this proposal defines gust intensities for altitudes up to 60,000 feet. Currently, § 25.341(a) defines the discrete gust velocities up to 50,000 feet. Therefore, as a conforming change, we propose to amend § 25.341(a)(5)(i) to define discrete gust velocities up to 60,000 feet for consistency between discrete gust and continuous turbulence criteria.

■ 4. Add a new paragraph § 25.341(c) that specifies a “round-the-clock” discrete gust criterion and a multi-axis discrete gust criterion for airplanes equipped with wing-mounted engines.

Following an accident in which an airplane shed a large wing-mounted nacelle, the National Transportation Safety Board (NTSB) recommended that the FAA amend the design load requirements to consider multiple axis loads encountered during severe turbulence (NTSB Safety

Recommendation A-93-137, November 15, 1993). This recommendation was specifically aimed at gust loads on wing-mounted engines. To address the NTSB’s concern, the FAA contracted an independent organization to develop a method of performing multi-axis discrete gust analysis for wing-mounted nacelles. The results of that study were reported to FAA in Stirling Dynamics Limited Report No. SDL-571-TR-2 dated May 1999 (<http://www.tc.faa.gov/its/worldpac/techrpt/ar99-62.pdf>). The recommendations of that report were accepted by ARAC and the FAA and are set forth in this proposal. This proposal would address the NTSB recommendation by prescribing two dynamic gust criteria for airplanes with wing-mounted engines. These are known as a “round-the-clock” discrete gust criterion, which is a discrete gust assumed to occur at any angle normal to the flight path, and a multi-axis dual discrete gust criterion, which is a pair of discrete gusts—one vertical and one lateral. These criteria would be set forth in a new paragraph § 25.341(c).

These actions would harmonize § 25.341 with the corresponding EASA standards.

*C. Revise “Design Fuel and Oil Loads” (§ 25.343), “High Lift Devices” (§ 25.345), “Gyroscopic Loads” (§ 25.371), “Speed Control Devices” (§ 25.373), and “Control Surface Loads: General” (§ 25.391)*

Sections 25.343, 25.345, 25.371, 25.373, and 25.391 specify various design load criteria and currently require consideration of only the discrete load criteria specified in § 25.341(a). However, the FAA believes that both the continuous turbulence criteria and the discrete gust criteria should be included when evaluating these other discrete load conditions since they account for the response to different, but still realistic, atmospheric characteristics. Therefore, the FAA proposes to add to each of these regulations a requirement to evaluate the continuous turbulence loads criteria in § 25.341(b). These actions would harmonize each of these requirements with the corresponding EASA standards.

*D. Revise “Engine Torque” (§ 25.361) and Add a New Section: “Engine Failure Loads” (§ 25.362)*

We propose to revise the engine loads design requirements for engine mounts, auxiliary power unit mounts, engine pylons, and adjacent supporting airframe structures. The proposed amendment would differentiate between various engine failure conditions and

specify design loads criteria that depend on the failure condition being considered. This proposal is intended to ensure that engine mounts and adjacent supporting structures are able to withstand the most severe loads expected in service, which the current regulations do not fully address. In numerous recent certification programs, the FAA has applied special conditions (under the provisions of § 21.16) that include the engine load design requirements proposed here.

Section 25.361 currently requires that the engine mounts and their supporting structure be designed for engine torque loads combined with flight loads, engine torque loads due to maximum acceleration, and engine torque loads due to malfunction or structural failure. Section 25.361 currently specifies requirements for turbopropeller engines, turbine engines, and reciprocating engines, and does not explicitly refer to auxiliary power unit (APU) installations.

We propose to revise § 25.361 to (1) remove the requirement to assess engine torque loads due to engine structural failures (this requirement is re-established in the new § 25.362, outlined below); (2) provide specific engine torque load criteria for auxiliary power unit installations; and (3) remove the requirements that apply to reciprocating engines. The title of § 25.361 would also be changed from “Engine torque” to “Engine and auxiliary power unit torque.” The proposed § 25.361(a) would apply to the main engines, while § 25.361(b) would apply to APUs. The proposed § 25.362, discussed below, would not apply to APUs.

We propose to establish a new § 25.362 that would require engine mounts and supporting airframe structure be designed for 1g flight loads combined with the most critical transient dynamic loads and vibrations resulting from failure of a blade, shaft, bearing or bearing support, or bird strike event.

Studies made by the engine and the airframe manufacturers have shown that large turbofan engines exhibit two distinct classes of sudden deceleration events. The first type of event involves transient deceleration conditions and rapid slowing of the rotating system. These events are usually associated with temporary loss of power or thrust capability, and often result in some engine distress, such as blade and/or wear strip damage. Examples are high power compressor surges and blade tip rub during maneuvers, or combinations of these events. These events are covered by the proposed § 25.361. Based

on the frequency of occurrence, the FAA considers these events to be limit load conditions that require the 1.5 factor of safety prescribed in § 25.303 to obtain ultimate loads. (The terms “limit,” “ultimate,” and “factor of safety” are discussed in § 25.301, “Loads,” § 25.303, “Factor of safety,” and § 25.305, “Strength and deformation.”)

The second type of event, which would be covered by the proposed § 25.362, involves structural failures that result in extensive engine damage and permanent loss of thrust-producing capability. Examples of these types of events are fan blade failures, bearing failures, and shaft failures. It is evident from service history that these more severe sudden engine failure events are sufficiently infrequent to be considered ultimate load conditions. Because of the rare occurrence of these events and the conservative method in which the loads are to be obtained, the FAA proposes that these ultimate load conditions be applied to engine mounts and pylon structure without an additional factor of safety. At the same time, to provide additional protection for the more critical airframe structure, the FAA proposes that these ultimate loads be multiplied by an additional factor of 1.25 when applied to the adjacent supporting airframe structure.

For these ultimate load conditions, deformation in the engine supporting structure would be allowed. However, any deformation resulting from these conditions must not prevent continued safe flight and landing. Lastly, the proposed new conditions in § 25.362 would be required to be treated as dynamic conditions, including all significant input and response loads.

These actions would harmonize §§ 25.361 and 25.362 with the corresponding EASA standards.

*E. Revise “Control Surface Loads: General” (§ 25.391), “Control System” (§ 25.395), and “Ground Gust Conditions” (§ 25.415)*

Section 25.415 currently requires that the flight control system be designed for loads due to ground gusts when parked or while taxiing. Section 25.415 is intended to protect the airplane flight control system and control surfaces from damage in these conditions. Although damage from ground gusts may not be an immediate hazard, the rule is intended to prevent damage to the control system that may not be detected before takeoff.

Several incidents have occurred in which airplanes sustained such undetected but severe damage to the flight control system due to the dynamic effects of ground gust conditions. The

incidents occurred on airplanes with unpowered mechanical controls with significant flexibility between the control surface and the gust locking devices. This flexibility allows dynamic loads, greater than the static design gust loads, to occur.

This proposal would revise § 25.415 to stand alone in regard to the required multiplying factors and provide an additional multiplying factor to account for dynamic amplification. The design conditions would be set forth as two design cases—one with gust locks engaged and another as a taxiing case with the gust locks disengaged but controls restrained by the pilot and/or powered system. A 1.25 factor would apply to the design hinge moments to obtain static limit loads for the design of the control system. A further multiplying factor of 1.6 (total multiplying factor of 2.0) would be applied for those parts of the control system where dynamic effects could be significant. A factor lower than 1.6, but not less than 1.2, could be used if substantiated by a rational analysis. If a dynamic factor of 1.2 is accepted, the total multiplying factor would then be  $1.2 \times 1.25 = 1.5$ .

These changes would provide the greatest effect on mechanical, unpowered control systems which have shown the greatest susceptibility to damage. Powered control systems have hydraulic actuators that naturally protect them against dynamic loads due to ground gusts.

We also propose to revise § 25.415 to reorganize and clarify the design conditions to be considered, and to identify the components and parts of the control system to which each of the conditions apply.

As a result of the changes to § 25.415, we propose removing the references to ground gusts in §§ 25.391 and 25.395(b).

These actions would harmonize §§ 25.391, 25.395, and 25.415 with the corresponding EASA standards.

*F. Revise “Rough Air Speed,  $V_{RA}$ ” (§ 25.1517)*

Section 25.1517 currently provides criteria for establishing the rough air speed,  $V_{RA}$ , for use as the recommended turbulence penetration airspeed to be included in the airplane flight manual. The rough air speed definition is currently based on several considerations, including  $V_B$ .

We would revise § 25.1517 to remove the reference to  $V_B$  in the definition of rough air speed and require that a rough air Mach number,  $M_{RA}$ , be established in addition to rough air speed. Also, the reference to § 25.1585, “Operating procedures,” is no longer applicable

since that regulation was modified. The reference would therefore be removed.

$V_B$  is the “design speed for maximum gust intensity.” This is a *design speed* and is specified in § 25.335(d).  $V_{RA}$  is the “rough air speed.” This is an *operational speed* to be included in the airplane flight manual (AFM) and is defined in § 25.1517. In the presence of turbulence, the AFM directs the pilot to slow to the rough air speed,  $V_{RA}$ .

In general, for a given gust intensity (gust speed), the gust loads on an airplane increase with increasing airplane speed. In the past, the discrete gust and continuous turbulence requirements of § 25.341 specified the highest gust speeds at  $V_B$ . (Lower gust speeds were specified at the higher airplane speeds,  $V_C$  and design diving speed,  $V_D$ .) The operational speed,  $V_{RA}$ , was established at a value less than or equal to  $V_B$  to ensure the airplane would be travelling at a sufficiently low airspeed to be able to withstand the highest expected gust speed. In this way, the airplane would not operate beyond its design capability.

Section 25.341 would be revised as described previously, and would no longer specify a unique gust speed at  $V_B$ . Rather, the gust speed would be assumed constant between  $V_B$  and  $V_C$ . Therefore, there would be no particular reason to link the rough air speed and  $V_B$ . The reference to  $V_B$  would therefore be removed, while the other criteria used to define rough air speed are maintained.

Above a certain altitude, the maximum operating limit speed,  $V_{MO}$ , is typically limited by Mach number on transport category airplanes. Therefore, we propose to revise § 25.1517 to require that a rough air Mach number,  $M_{RA}$ , also be established, in addition to rough air speed,  $V_{RA}$ .

These actions would harmonize § 25.1517 with the corresponding EASA standards. We would include a minor clarifying addition to the rule language that would not change the intent of the rule. We have notified EASA of this addition.

*G. Advisory Material*

The FAA is developing three new proposed advisory circulars (ACs) to be published concurrently with the proposed regulations contained in this NPRM. The proposed ACs would provide guidance material for acceptable means, but not the only means, of demonstrating compliance with proposed §§ 25.341, 25.362, and 25.415, respectively. We will accept public comments to the following proposed ACs on the “Aviation Safety Draft Documents Open for Comment”

Internet Web site at [http://www.faa.gov/aircraft/draft\\_docs/](http://www.faa.gov/aircraft/draft_docs/):

- AC 25.341–X, “Dynamic Gust Loads.”
- AC 25.362–X, “Engine Failure Loads.”
- AC 25.415–X, “Ground Gust Conditions.”

#### IV. Regulatory Notices and Analyses

##### A. Regulatory Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

The FAA proposes to amend the airworthiness regulations that would harmonize 14 CFR part 25 requirements with the corresponding requirements in Book 1 of EASA CS–25. Meeting two sets of certification requirements raises the cost of developing a new transport

category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, making the certification process more efficient, and improving certification efficiency, the FAA tasked ARAC through the LDHWG to review existing structures regulations and recommend changes that would eliminate differences between the U.S. and European airworthiness standards, while maintaining or improving the level of safety in the current regulations.

All of the proposals below are based on LDHWG recommendations, which EASA has incorporated into CS–25. The FAA agrees with the ARAC recommendations as adopted by EASA, and we propose to amend part 25 accordingly, with minor variations in wording that do not change the intent. The proposed changes would eliminate differences between the U.S. and European airworthiness standards. These efforts are referred to as harmonization.

This proposed rule would revise §§ 25.331, “Symmetric maneuvering conditions,” 25.341, “Gust and turbulence loads,” 25.343, “Design fuel and oil loads,” 25.345, “High lift devices,” 25.361, “Engine torque,” 25.371, “Gyroscopic loads,” 25.373, “Speed control devices,” 25.391, “Control surface loads: General,” 25.395, “Control system,” 25.415, “Ground gust conditions,” and 25.1517, “Rough air speed;” add a new § 25.362, “Engine failure loads”; and remove appendix G to part 25 to remove differences with EASA CS–25. The FAA has concluded for the reasons previously discussed in the preamble that the adoption of these EASA requirements into the FAA certification standards is the most efficient way to harmonize these sections and, in so doing, the existing level of safety will be preserved.

The FAA estimates that there are no costs associated with this proposal. A review of current manufacturers of transport category aircraft certificated under part 25 has revealed that all such future aircraft are expected to be certificated under both U.S. (part 25) and EASA (CS–25). Since future certificated transport category aircraft are expected to meet the existing EASA CS–25 Book 1 requirements, and this proposed rule would adopt the same EASA requirements, manufacturers would incur no additional cost resulting from this proposal. The FAA expects the costs to be minimal and the benefits to be positive but difficult to estimate as this proposed rule is one part of a larger effort to minimize differences between U.S. and EASA certification standards.

The FAA, however, has not attempted to quantify the cost savings that may accrue due to these specific proposals, beyond noting that while they may be minimal, they contribute to a large potential harmonization savings. The agency concludes that these proposed changes would eliminate regulatory differences between the airworthiness standards of the FAA and EASA without affecting current industry practices and that savings will result. Further analysis is not required.

The FAA requests comments with supporting documentation in regard to the conclusions contained in this section.

FAA has, therefore, determined that this proposed rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT’s Regulatory Policies and Procedures.

##### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify, and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As noted above, the proposed changes to part 25 are cost relieving because this proposed rule creates a single certification standard and removes the burden of having to meet two sets of certification requirements. The FAA

believes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The net effect of the proposed rule is minimum regulatory cost relief. Airplane manufacturers already meet or expect to meet this standard. The FAA uses the size standards from the Small Business Administration for Aircraft Manufacturing specifying companies having less than 1,500 employees are small entities. Given that this proposed rule is cost-relieving, and there are no small entity manufacturers of part 25 airplanes with less than 1,500 employees, the FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The FAA requests comments regarding this determination. Specifically, the FAA requests comments on whether the proposed rule creates any specific compliance costs unique to small entities. Please provide detailed economic analysis to support any cost claims.

#### *C. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and has determined that the proposed rule is in accord with the Trade Agreements Act as it uses European standards as the basis for United States regulation.

#### *D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the

requirements of Title II of the Act do not apply.

#### *E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this proposed rule. To the extent you may have comments on the information collection burdens associated with the aircraft certification application process, please direct those comments to the information collection associated with OMB Control Number 2120–0018.

#### *F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Executive Order (EO) 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policy and agency responsibilities of Executive Order 13609, Promoting International Regulatory Cooperation. The agency has determined that this action would eliminate differences between U.S. aviation standards and those of other civil aviation authorities by creating a single set of certification requirements for transport category airplanes that would be acceptable in both the United States and Europe.

#### *G. Environmental Analysis*

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f of Order 1050.1E and

involves no extraordinary circumstances.

### **V. Executive Order Determinations**

#### *A. Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have Federalism implications.

#### *B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

### **VI. Additional Information**

#### *A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not

file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

#### B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal at <http://www.regulations.gov>,
2. Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies), or
3. Accessing the Government Printing Office's Web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

#### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

#### PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

- 1. The authority citation for part 25 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704.

- 2. Amend § 25.331 by revising paragraph (c) introductory text and paragraph (c)(2) to read as follows:

#### § 25.331 Symmetric maneuvering conditions.

\* \* \* \* \*

(c) *Maneuvering pitching conditions.* The following conditions must be investigated:

- (1) \* \* \*
- (2) *Checked maneuver between  $V_A$  and  $V_D$ .* Nose-up checked pitching maneuvers must be analyzed in which the positive limit load factor prescribed in § 25.337 is achieved. As a separate condition, nose-down checked pitching maneuvers must be analyzed in which a limit load factor of 0g is achieved. In defining the airplane loads, the flight deck pitch control motions described in paragraphs (c)(2)(i) through (c)(2)(iv) of this section must be used:

(i) The airplane is assumed to be flying in steady level flight at any speed between  $V_A$  and  $V_D$  and the flight deck pitch control is moved in accordance with the following formula:

$$\delta(t) = \delta_1 \sin(\omega t) \text{ for } 0 \leq t \leq t_{\max}$$

Where—

$\delta_1$  = the maximum available displacement of the flight deck pitch control in the initial direction, as limited by the control system stops, control surface stops, or by pilot effort in accordance with § 25.397(b);

$\delta(t)$  = the displacement of the flight deck pitch control as a function of time. In the

initial direction,  $\delta(t)$  is limited to  $\delta_1$ . In the reverse direction,  $\delta(t)$  may be truncated at the maximum available displacement of the flight deck pitch control as limited by the control system stops, control surface stops, or by pilot effort in accordance with § 25.397(b);

$$t_{\max} = 3\pi/2\omega;$$

$\omega$  = the circular frequency (radians/second) of the control deflection taken equal to the undamped natural frequency of the short period rigid mode of the airplane, with active control system effects included where appropriate; but not less than:

$$\omega = \frac{\pi V}{2V_A} \text{ radians per second;}$$

Where—

$V$  = the speed of the airplane at entry to the maneuver.

$V_A$  = the design maneuvering speed prescribed in § 25.335(c).

(ii) For nose-up pitching maneuvers, the complete flight deck pitch control displacement history may be scaled down in amplitude to the extent just necessary to ensure that the positive limit load factor prescribed in § 25.337 is not exceeded. For nose-down pitching maneuvers, the complete flight deck control displacement history may be scaled down in amplitude to the extent just necessary to ensure that the normal acceleration at the center of gravity does not go below 0 g.

(iii) In addition, for cases where the airplane response to the specified flight deck pitch control motion does not achieve the prescribed limit load factors, then the following flight deck pitch control motion must be used:

$$\delta(t) = \delta_1 \sin(\omega t) \text{ for } 0 \leq t \leq t_1$$

$$\delta(t) = \delta_1 \text{ for } t_1 \leq t \leq t_2$$

$$\delta(t) = \delta_1 \sin(\omega[t + t_1 - t_2]) \text{ for } t_2 \leq t \leq t_{\max}$$

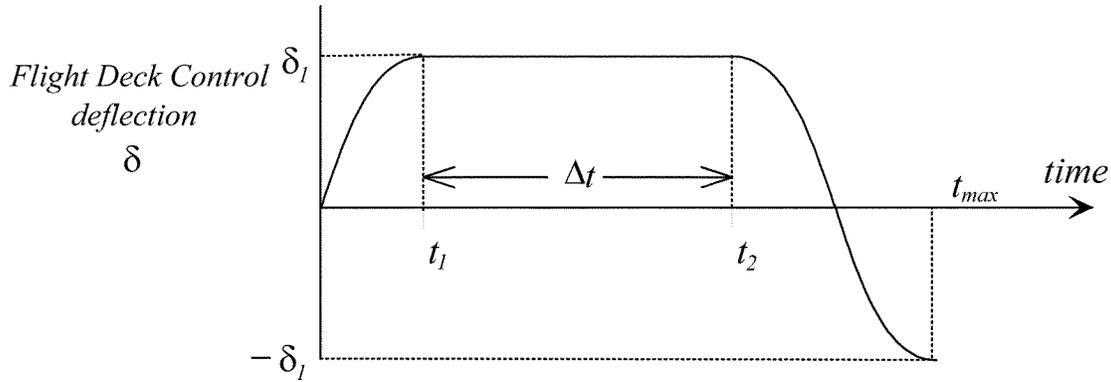
Where—

$$t_1 = \pi/2\omega$$

$$t_2 = t_1 + \Delta t$$

$$t_{\max} = t_2 + \pi/\omega;$$

$\Delta t$  = the minimum period of time necessary to allow the prescribed limit load factor to be achieved in the initial direction, but it need not exceed five seconds (see figure below).



(iv) In cases where the flight deck pitch control motion may be affected by inputs from systems (for example, by a stick pusher that can operate at high load factor as well as at 1 g), then the effects of those systems shall be taken into account.

(v) Airplane loads that occur beyond the following times need not be considered:

(A) For the nose-up pitching maneuver, the time at which the normal acceleration at the center of gravity goes below 0 g;

(B) For the nose-down pitching maneuver, the time at which the normal acceleration at the center of gravity goes above the positive limit load factor prescribed in § 25.337;

(C)  $t_{max}$ .

■ 3. Amend § 25.341 by revising paragraph (a)(5)(i) and paragraph (b), and by adding a new paragraph (c) to read as follows:

**§ 25.341 Gust and turbulence loads.**

(a) \* \* \*

(5) \* \* \*

(i) At airplane speeds between  $V_B$  and  $V_C$ : Positive and negative gusts with reference gust velocities of 56.0 ft/sec EAS must be considered at sea level. The reference gust velocity may be reduced linearly from 56.0 ft/sec EAS at sea level to 44.0 ft/sec EAS at 15,000 feet. The reference gust velocity may be further reduced linearly from 44.0 ft/sec EAS at 15,000 feet to 20.86 ft/sec EAS at 60,000 feet.

\* \* \* \* \*

(b) *Continuous turbulence design criteria.* The dynamic response of the airplane to vertical and lateral continuous turbulence must be taken into account. The dynamic analysis must take into account unsteady aerodynamic characteristics and all significant structural degrees of freedom including rigid body motions. The limit loads must be determined for all critical altitudes, weights, and weight distributions as specified in § 25.321(b),

and all critical speeds within the ranges indicated in § 25.341(b)(3).

(1) Except as provided in paragraphs (b)(4) and (b)(5) of this section, the following equation must be used:

$$P_L = P_{L-1g} \pm U_\sigma \bar{A}$$

Where—

$P_L$  = limit load;

$P_{L-1g}$  = steady 1 g load for the condition;

$\bar{A}$  = ratio of root-mean-square incremental load for the condition to root-mean-square turbulence velocity; and

$U_\sigma$  = limit turbulence intensity in true airspeed, specified in paragraph (b)(3) of this section.

(2) Values of  $\bar{A}$  must be determined according to the following formula:

$$\bar{A} = \sqrt{\int_0^\infty |H(\Omega)|^2 \Phi(\Omega) d\Omega}$$

Where—

$H(\Omega)$  = the frequency response function, determined by dynamic analysis, that relates the loads in the aircraft structure to the atmospheric turbulence; and

$\Phi(\Omega)$  = normalized power spectral density of atmospheric turbulence given by—

$$\Phi(\Omega) = \frac{L}{\pi} \frac{1 + \frac{8}{3}(1.339\Omega L)^2}{\left[1 + (1.339\Omega L)^2\right]^{3/2}}$$

Where—

$\Omega$  = reduced frequency, radians per foot; and  $L$  = scale of turbulence = 2,500 ft.

(3) The limit turbulence intensities,  $U_\sigma$ , in feet per second true airspeed required for compliance with this paragraph are—

(i) At airplane speeds between  $V_B$  and  $V_C$ :  $U_\sigma = U_{\sigma ref} F_g$

Where—

$U_{\sigma ref}$  is the reference turbulence intensity that varies linearly with altitude from 90 fps (TAS) at sea level to 79 fps (TAS) at 24,000 feet and is then constant at 79 fps (TAS) up to the altitude of 60,000 feet.

$F_g$  is the flight profile alleviation factor defined in paragraph (a)(6) of this section;

(ii) At speed  $V_D$ :  $U_\sigma$  is equal to 1/2 the values obtained under paragraph (b)(3)(i) of this section.

(iii) At speeds between  $V_C$  and  $V_D$ :  $U_\sigma$  is equal to a value obtained by linear interpolation.

(iv) At all speeds, both positive and negative incremental loads due to continuous turbulence must be considered.

(4) When an automatic system affecting the dynamic response of the airplane is included in the analysis, the effects of system non-linearities on loads at the limit load level must be taken into account in a realistic or conservative manner.

(5) If necessary for the assessment of loads on airplanes with significant non-linearities, it must be assumed that the turbulence field has a root-mean-square velocity equal to 40 percent of the  $U_\sigma$  values specified in paragraph (b)(3) of this section. The value of limit load is that load with the same probability of exceedance in the turbulence field as  $\bar{A}U_\sigma$  of the same load quantity in a linear approximated model.

(c) *Supplementary gust conditions for wing-mounted engines.* For airplanes equipped with wing-mounted engines, the engine mounts, pylons, and wing supporting structure must be designed for the maximum response at the nacelle center of gravity derived from the following dynamic gust conditions applied to the airplane:

(1) A discrete gust determined in accordance with § 25.341(a) at each angle normal to the flight path, and separately,

(2) A pair of discrete gusts, one vertical and one lateral. The length of each of these gusts must be independently tuned to the maximum response in accordance with § 25.341(a). The penetration of the airplane in the combined gust field and the phasing of the vertical and lateral component gusts must be established to develop the maximum response to the gust pair. In the absence of a more rational analysis, the following formula must be used for each of the maximum engine loads in all six degrees of freedom:

$$P_L = P_{L-1g} \pm 0.85\sqrt{L_V^2 + L_L^2}$$

Where—

$P_L$  = limit load;

$P_{L-1g}$  = steady 1g load for the condition;

$L_V$  = peak incremental response load due to a vertical gust according to § 25.341(a); and

$L_L$  = peak incremental response load due to a lateral gust according to § 25.341(a).

■ 4. Amend § 25.343 by revising paragraph (b)(1)(ii) to read as follows:

**§ 25.343 Design fuel and oil loads.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) The gust and turbulence

conditions of § 25.341, but assuming 85% of the gust velocities prescribed in § 25.341(a)(4) and 85% of the turbulence intensities prescribed in § 25.341(b)(3).

\* \* \* \* \*

■ 5. Amend § 25.345 by revising paragraph (c)(2) to read as follows:

**§ 25.345 High lift devices.**

\* \* \* \* \*

(c) \* \* \*

(2) The vertical gust and turbulence conditions prescribed in § 25.341.

\* \* \* \* \*

■ 6. Revise § 25.361 to read as follows:

**§ 25.361 Engine and auxiliary power unit torque.**

(a) For engine installations—

(1) Each engine mount, pylon, and adjacent supporting airframe structures must be designed for the effects of—

(i) A limit engine torque corresponding to takeoff power/thrust and, if applicable, corresponding propeller speed, acting simultaneously with 75% of the limit loads from flight condition A of § 25.333(b);

(ii) A limit engine torque corresponding to the maximum continuous power/thrust and, if applicable, corresponding propeller speed, acting simultaneously with the limit loads from flight condition A of § 25.333(b); and

(iii) For turbopropeller installations only, in addition to the conditions specified in paragraphs (a)(1)(i) and (ii) of this section, a limit engine torque corresponding to takeoff power and propeller speed, multiplied by a factor accounting for propeller control system malfunction, including quick feathering, acting simultaneously with 1g level flight loads. In the absence of a rational analysis, a factor of 1.6 must be used.

(2) The limit engine torque to be considered under paragraph (a)(1) of this section must be obtained by—

(i) For turbopropeller installations, multiplying mean engine torque for the

specified power/thrust and speed by a factor of 1.25;

(ii) For other turbine engines, the limit engine torque must be equal to the maximum accelerating torque for the case considered.

(3) The engine mounts, pylons, and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the limit engine torque loads imposed by each of the following conditions to be considered separately:

(i) Sudden maximum engine deceleration due to malfunction or abnormal condition; and

(ii) The maximum acceleration of engine.

(b) For auxiliary power unit installations, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the limit torque loads imposed by each of the following conditions to be considered separately:

(1) Sudden maximum auxiliary power unit deceleration due to malfunction or abnormal condition or structural failure; and

(2) The maximum acceleration of the auxiliary power unit.

■ 7. Add a new § 25.362 to read as follows:

**§ 25.362 Engine failure loads.**

(a) For engine mounts, pylons, and adjacent supporting airframe structure, an ultimate loading condition must be considered that combines 1g flight loads with the most critical transient dynamic loads and vibrations, as determined by dynamic analysis, resulting from failure of a blade, shaft, bearing or bearing support, or bird strike event. Any permanent deformation from these ultimate load conditions must not prevent continued safe flight and landing.

(b) The ultimate loads developed from the conditions specified in paragraph (a) of this section are to be—

(1) Multiplied by a factor of 1.0 when applied to engine mounts and pylons; and

(2) Multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

■ 8. Revise § 25.371 to read as follows:

**§ 25.371 Gyroscopic loads.**

The structure supporting any engine or auxiliary power unit must be designed for the loads, including gyroscopic loads, arising from the conditions specified in §§ 25.331, 25.341, 25.349, 25.351, 25.473, 25.479, and 25.481, with the engine or auxiliary power unit at the maximum rotating

speed appropriate to the condition. For the purposes of compliance with this paragraph, the pitch maneuver in § 25.331(c)(1) must be carried out until the positive limit maneuvering load factor (point A<sub>2</sub> in § 25.333(b)) is reached.

■ 9. Amend § 25.373 by revising paragraph (a) to read as follows:

**§ 25.373 Speed control devices.**

\* \* \* \* \*

(a) The airplane must be designed for the symmetrical maneuvers prescribed in §§ 25.333 and 25.337, the yawing maneuvers in § 25.351, and the vertical and lateral gust and turbulence conditions prescribed in § 25.341(a) and (b) at each setting and the maximum speed associated with that setting; and

\* \* \* \* \*

■ 10. Amend § 25.391 by revising the introductory text to read as follows:

**§ 25.391 Control surface loads: General.**

The control surfaces must be designed for the limit loads resulting from the flight conditions in §§ 25.331, 25.341(a) and (b), 25.349, and 25.351, considering the requirements for—

\* \* \* \* \*

■ 11. Amend § 25.395 by revising paragraph (b) to read as follows:

**§ 25.395 Control system.**

\* \* \* \* \*

(b) The system limit loads of paragraph (a) of this section need not exceed the loads that can be produced by the pilot (or pilots) and by automatic or power devices operating the controls.

\* \* \* \* \*

■ 12. Revise § 25.415 to read as follows:

**§ 25.415 Ground gust conditions.**

(a) The flight control systems and surfaces must be designed for the limit loads generated when the aircraft is subjected to a horizontal 65 knots ground gust from any direction, while taxiing with the controls locked and unlocked and while parked with the controls locked.

(b) The control system and surface loads due to ground gust may be assumed to be static loads, and the hinge moments H must be computed from the formula:

$$H = K (1/2) \rho_0 V^2 c S$$

Where—

K = hinge moment factor for ground gusts derived in paragraph (c) of this section;

$\rho_0$  = density of air at sea level;

V = 65 knots relative to the aircraft;

S = area of the control surface aft of the hinge line;

c = mean aerodynamic chord of the control surface aft of the hinge line.

(c) The hinge moment factor K for ground gusts must be taken from the following table:

Surface	K	Position of controls
(a) Aileron .....	0.75	Control Column locked or lashed in mid-position.
(b) Aileron .....	*±0.50	Ailerons at full throw.
(c) Elevator .....	*±0.75	Elevator full down.
(d) Elevator .....	*±0.75	Elevator full up.
(e) Rudder .....	0.75	Rudder in neutral.
(f) Rudder .....	0.75	Rudder at full throw.

\* A positive value of K indicates a moment tending to depress the surface, while a negative value of K indicates a moment tending to raise the surface.

(d) The computed hinge moment of paragraph (b) of this section must be used to determine the limit loads due to ground gust conditions for the control surface. A 1.25 factor on the computed hinge moments must be used in calculating limit control system loads.

(e) Where control system flexibility is such that the rate of load application in the ground gust conditions might produce transient stresses appreciably higher than those corresponding to static loads, in the absence of a rational analysis, an additional factor of 1.6 must be applied to the control system loads of paragraph (d) of this section to obtain limit loads. If a rational analysis is used, the additional factor must not be less than 1.2.

(f) For the condition of the control locks engaged, the control surfaces, the control system locks, and the parts of the control systems (if any) between the surfaces and the locks must be designed to the resultant limit loads. Where control locks are not provided, then the control surfaces, the control system stops nearest the surfaces, and the parts of the control systems (if any) between the surfaces and the stops must be designed to the resultant limit loads. If the control system design is such as to allow any part of the control system to impact with the stops due to flexibility, then the resultant impact loads must be taken into account in deriving the limit loads due to ground gust.

(g) For the condition of taxiing with the control locks disengaged, the following apply:

(1) The control surfaces, the control system stops nearest the surfaces, and the parts of the control systems (if any) between the surfaces and the stops must be designed to the resultant limit loads.

(2) The parts of the control systems between the stops nearest the surfaces and the flight deck controls must be designed to the resultant limit loads, except that the parts of the control system where loads are eventually reacted by the pilot need not exceed:

(i) The loads corresponding to the maximum pilot loads in § 25.397(c) for each pilot alone; or

(ii) 0.75 times these maximum loads for each pilot when the pilot forces are applied in the same direction.

■ 13. Revise § 25.1517 to read as follows:

**§ 25.1517 Rough air speed,  $V_{RA}$ .**

(a) A rough air speed,  $V_{RA}$ , for use as the recommended turbulence penetration airspeed, and a rough air Mach number,  $M_{RA}$ , for use as the recommended turbulence penetration Mach number, must be established.  $V_{RA}/M_{RA}$  must be sufficiently less than  $V_{MO}/M_{MO}$  to ensure that likely speed variation during rough air encounters will not cause the overspeed warning to operate too frequently.

(b) At altitudes where  $V_{MO}$  is not limited by Mach number, in the absence of a rational investigation substantiating the use of other values,  $V_{RA}$  must be less than  $V_{MO}-35$  KTAS.

(c) At altitudes where  $V_{MO}$  is limited by Mach number,  $M_{RA}$  may be chosen to provide an optimum margin between low and high speed buffet boundaries.

■ 14. Remove and reserve appendix G to part 25.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on May 6, 2013.

**Dorenda D. Baker,**

*Director, Aircraft Certification Service.*

[FR Doc. 2013-12445 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2008-0288; Directorate Identifier 2006-SW-25-AD]

**RIN 2120-AA64**

**Airworthiness Directives; Bell Helicopter Textron, Inc., Helicopters**

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

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD) for Bell Helicopter Textron, Inc. (Bell), Model 214B and B-1 helicopters, which proposed to require inspecting certain pylon support spindle assemblies (spindles) for any corrosion, or a nick, scratch, dent, or crack, and repairing or replacing any unairworthy spindle before further flight. This SNPRM proposes to revise those requirements by updating the cost of compliance, revising the recording requirements, adding a requirement to reduce the retirement life of an installed spindle, and adding Bell Model 214ST to the applicability.

**DATES:** We must receive comments on this proposed AD by July 29, 2013.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- *Fax:* 202-493-2251.

- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

### 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 economic 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 service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101; telephone (817) 280-3391; fax (817) 280-6466; or at <http://www.bellcustomer.com/files/>. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### FOR FURTHER INFORMATION CONTACT:

Martin Crane, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5056; email [7-AVS-ASW-170@faa.gov](mailto:7-AVS-ASW-170@faa.gov).

### SUPPLEMENTARY INFORMATION:

#### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this

proposal in light of the comments we receive.

### Discussion

On March 3, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Bell Model 214B and B-1 helicopters with a spindle, part number (P/N) 214-030-606-005, installed. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 13, 2008 (73 FR 13513). The NPRM proposed to require creating a component history card or equivalent for each spindle, inspecting certain spindles for any corrosion, or a nick, scratch, dent, or crack, and repairing or replacing any unairworthy spindle before further flight. That NPRM was prompted by three in-flight failures of the spindle which resulted in forced landings and one serious injury. The proposed actions were intended to detect damage in the radii or cracking of a spindle, and to prevent failure of a spindle and subsequent loss of control of the helicopter. The proposed actions were also intended to be interim actions until a retirement life for the affected spindles could be developed and new replacement spindles became available.

### Actions Since Previous NPRM Was Issued

Since we issued the previous NPRM (73 FR 13513, March 13, 2008), Bell conducted further evaluation of the cracked spindles and determined it necessary to establish a retirement life for the spindles because the speed at which a crack can propagate is such that a more frequent inspection interval would not be practical. As a result, Bell released Alert Service Bulletin (ASB) No. 214-08-70, dated November 11, 2008, now at Revision C, dated April 14, 2009, to establish the retirement life for the spindles on Model 214B and 214B-1 helicopters. Due to design similarities, Bell conducted further evaluation of the spindles on Model 214ST helicopters and published ASB No. 214ST-08-86, dated November 11, 2008, now at Revision B, dated April 14, 2009, to revise the retirement life for those spindles. The first actual reported crack in a Model 214ST spindle, P/N 214-030-606-103, prompted Bell to release Information Letter 214ST-12-23, dated January 30, 2012.

This SNPRM proposes the following changes:

- Adding Model 214ST helicopters to the applicability;
- Removing certain previously proposed recording requirements;

- Removing the previously proposed visual and magnetic particle inspection requirements and subsequent replacement and repair requirements;

- Establishing a retirement life of 1,250 hours TIS or total accumulated retirement index number (RIN) of 20,000, whichever occurs first, for any spindle, part number (P/N) 214-030-606-005, that is installed on a Model 214B or Model 214B-1 helicopter;
- Reducing the retirement life to 2,500 hours TIS or total accumulated RIN of 50,000, whichever occurs first, for any spindle, P/N 214-030-606-103, that is installed on a Model 214ST helicopter;
- Establishing a method of determining the total accumulated RIN; and

- Replacing any spindle which has reached its airworthiness retirement life.

This SNPRM also updates the cost of compliance information of this AD by correcting the estimated number of work-hours to replace both spindles from 15 work-hours to 24 work-hours, by updating the estimated labor cost per work-hour from \$80 to \$85 per work-hour, and by updating the cost of required parts to current replacement part costs.

### Comments

We gave the public the opportunity to comment on the previous NPRM (73 FR 13513, March 13, 2008). The following presents the comments received on the previous NPRM and the FAA's response to each comment.

### Request

Bell stated that results from analysis and review of the pylon spindle assembly, P/N 214-030-606-005, identified the requirement to assign an airworthiness retirement life to that assembly. They also stated that alert service bulletins would detail the retirement life of the spindle. We agree and have revised this SNPRM accordingly.

Bell commented that the previous NPRM (73 FR 13513, March 13, 2008) did not address conversion of torque events to RIN. We agree and have revised this SNPRM accordingly.

Bell also stated that the previous NPRM mis-identified the visual inspection requirements of using a magnifying glass on each outer radius of the spindle; that this visual inspection requirement is for the main rotor hub spindle, not the transmission spindle. They also stated that once cracks start, they progress very rapidly and visual inspection at a frequency designed to discover cracking would not be manageable. We agree. With

establishment of a maximum airworthiness life limit for the spindle and after further review, we determined that deleting the previously proposed visual inspections will not impact the overall level of safety.

#### FAA's Determination

We are proposing this SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other helicopters of these same type designs. Certain changes described above expand the scope of the original NPRM (73 FR 13513, March 13, 2008). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment.

#### Related Service Information

We have reviewed Bell ASB No. 214-08-70, Revision C, dated April 14, 2009 (214-08-70), which establishes a maximum airworthiness life limit of 1,250 hours TIS or a total accumulated RIN of 20,000, whichever occurs first, for any spindle, P/N 214-030-606-005, that is installed on a Model 214B or Model 214B-1 helicopter. ASB 214-08-70 was prompted by three reported incidents of a cracked spindle, P/N 214-030-606-005. We have also reviewed Bell ASB No. 214ST-08-86, Revision B, dated April 14, 2009 (214ST-08-86), which reduces the maximum airworthiness life limit from 5,000 hours TIS to 2,500 hours TIS or a total accumulated RIN of 50,000, whichever occurs first, for any spindle, P/N 214-030-606-103, that is installed on a Model 214ST helicopter. ASB 214ST-08-86 was published after further evaluation of spindle, P/N 214-030-606-103, which was prompted by design similarities to spindle, P/N 214-030-606-005. The ASBs also specify determining the accumulated RIN by calculating a RIN factor of 1 for each lift or takeoff performed during normal operation and of 2 for each lift or takeoff performed during logging operation. When actual lift events are unknown or cannot be determined, both ASBs specify calculating RIN at 30 lift events per flight hour; ASB No. 214-08-70 further specifies calculating flight hours at a rate of 900 hours per year. Both ASBs specify replacing any spindle that has reached its maximum airworthiness life limit.

Additionally, we reviewed Bell Information Letter 214ST-12-23, dated January 30, 2012, which was issued to advise owners and operators of the first actual reported crack in a Model 214ST spindle, P/N 214-030-606-103.

#### Proposed Requirements of the SNPRM

This proposed AD would require, within 50 hours TIS:

- Creating a component history card or equivalent record for each affected spindle;
- Determining total hours TIS, if not already recorded;
- Determining total accumulated RIN;
- Recording the RIN and hours TIS on the spindle's component history card or equivalent record;
- Establishing a new retirement life for spindle, P/N 214-030-606-005, of 1,250 hours TIS or a total accumulated RIN of 20,000, whichever occurs first, for Models 214B and 214B-1, and reducing the retirement life for spindle, P/N 214-030-606-103, from 5,000 hours TIS to 2,500 hours TIS or an accumulated RIN of 50,000, whichever occurs first, for Model 214ST; and
- Replacing any spindle which has reached its airworthiness retirement life.

#### Differences Between this SNPRM and the Service Information

The service information specifies, as part of determining the life of a currently installed spindle, accumulating a RIN factor of 2 for each lift or takeoff performed during a logging operation. This SNPRM would instead require using a RIN factor of 2 for any external load lift or takeoff in which the helicopter achieves a vertical altitude difference of greater than 200 feet indicated altitude between the pick-up and drop-off point. We have determined that other external load lift operations with the specified vertical altitude difference or greater would experience the same double torque cycle as in logging operations, and that a RIN factor of 2 would need to be used for those type of operations as well. Also, the service information for Models 214B and 214B-1 specify an initial compliance time of 150 flight hours. We are retaining the initial compliance time of 50 hours TIS from the previous NPRM in this SNPRM.

#### Costs of Compliance

We estimate that this proposed AD would affect 12 Model 214B/B-1 and 24 Model 214ST helicopters of U.S. registry. We estimate that operators may incur the following costs in order to comply with this AD. It would take about 1 work-hour for the record keeping requirements of this proposed AD, and about 24 work-hours to replace both spindles. Labor costs are estimated at \$85 per work-hour and the cost of parts would be about \$39,806 for both spindles for a Model 214B or 214B-1, and \$40,802 for both spindles for a

Model 214ST. Based on these estimates, for record keeping and the replacement of a pair of spindles, the total per helicopter cost would be \$41,931 for a Model 214B or 214B-1 and \$42,927 for a Model 214ST. The total cost of recordkeeping would be about \$3,060.

#### 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 to the extent that it justifies making a regulatory distinction; 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 an economic 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 airworthiness directive (AD):

#### Bell Helicopter Textron, Inc., Helicopters:

Docket No. FAA-2008-0288; Directorate Identifier 2006-SW-25-AD.

##### (a) Applicability

This AD applies to Bell Helicopter Textron, Inc. (Bell), Model 214B, 214B-1, and 214ST helicopters, with pylon support spindle assembly (spindle), part number (P/N) 214-030-606-005 or -103, installed, certificated in any category.

##### (b) Unsafe Condition

This AD defines the unsafe condition as fatigue cracking of a spindle. This condition could result in failure of the spindle and subsequent loss of control of the helicopter.

##### (c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

##### (d) Required Actions

(1) Within 50 hours time-in-service (TIS):

(i) Create a component history card or equivalent record for each spindle, P/N 214-030-606-005 and 214-030-606-103, recording the spindle's P/N and serial number (S/N).

(ii) Review the helicopter records to determine the hours TIS of each spindle, if the hours TIS are not already recorded for your model helicopter. For each month for which the hours TIS is unknown, record 75 hours TIS.

(iii) Determine the total accumulated retirement index number (RIN) for each spindle. For the purpose of this AD, count 1 RIN for each takeoff and 2 RIN for each external load lift in which the helicopter achieves a vertical altitude difference of greater than 200 feet indicated altitude between the pick-up and drop-off point. For any time period for which the accumulated RIN cannot be determined while the spindle was installed on a helicopter, multiply the hours TIS by 30 to calculate the spindle's accumulated RIN.

(iv) Record the hours TIS and total accumulated RIN for each spindle on the component history card or equivalent record.

(2) Revise the Airworthiness Limitations section of the applicable maintenance manual or Instructions for Continued Airworthiness as follows:

(i) By establishing a new retirement life for the spindle, P/N 214-030-606-005, of 1,250 hours TIS or a total accumulated RIN of 20,000, whichever occurs first.

(ii) By reducing the retirement life for the spindle, P/N 214-030-606-103, from 5,000 hours TIS to 2,500 hours TIS or a total accumulated RIN of 50,000, whichever occurs first.

(3) Replace any spindle, P/N 214-030-606-005, that has been in service for 1,250 or more hours TIS, or a total accumulated RIN of 20,000 or more, whichever occurs first.

(4) Replace any spindle, P/N 214-030-606-103, that has been in service for 2,500 or more hours TIS, or a total accumulated RIN of 50,000 or more, whichever occurs first.

(5) Continue to count and record the accumulated RIN count and hours TIS for each spindle on its component history card or equivalent record.

##### (e) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Martin Crane, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5056; email 7-AVS-ASW-170@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

##### (f) Subject

Joint Aircraft Service Component (JASC) Code: 6330, Transmission Mount.

Issued in Fort Worth, Texas, on May 17, 2013.

##### Kim Smith,

*Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013-12522 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2013-0454; Directorate Identifier 2009-SW-081-AD]

RIN 2120-AA64

#### Airworthiness Directives; Sikorsky Aircraft Corporation-Manufactured (Sikorsky) Model Helicopters (type certificate currently held by Erickson Air-Crane Incorporated)

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) for Sikorsky Aircraft Corporation-manufactured Model S-64E helicopters (type certificate currently held by Erickson Air-Crane Incorporated (Erickson)). That AD currently requires inspecting and reworking the main gearbox (MGB) assembly second stage lower planetary plate (plate). This action would establish or reduce the life limits for certain flight-critical components, remove from service various parts, require repetitive inspections and other corrective actions, and require replacing any cracked part discovered during an inspection. This proposal is prompted by further analysis performed by the current type certificate holder and the service history of certain parts. The actions specified in the proposed AD are intended to prevent a crack in a flight critical component, failure of a critical part, and subsequent loss of control of the helicopter.

**DATES:** We must receive comments on this proposed AD by July 29, 2013.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.
- *Fax:* 202-493-2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### 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 economic 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 service information identified in this proposed AD, contact Erickson Air-Crane Incorporated, ATTN: Chris Erickson/Compliance Officer, 3100 Willow Springs Rd, PO Box 3247, Central Point, OR 97502, telephone

(541) 664-5544, fax (541) 664-2312, email address [cerickson@ericksonaircrane.com](mailto:cerickson@ericksonaircrane.com). You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:**

Michael Kohner, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222-5170; email [7-avs-asw-170@faa.gov](mailto:7-avs-asw-170@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

**Discussion**

On September 5, 1997, we issued AD 97-19-10, Amendment 39-10130 (62 FR 47933, September 12, 1997), to require, at 1,300 hours time-in-service (TIS), a fluorescent-magnetic particle inspection of the plate, part number (P/N) 6435-20229-102, for a crack, replacing the plate if a crack is found, and reworking the plate if there is no crack. That action also requires, at 1,500 hours TIS, and thereafter at intervals not to exceed 70 hours TIS, for a reworked plate, P/N 6435-20229-102, and for plate, P/N 6435-20229-104, inspecting for a crack and replacing the main gearbox assembly if a crack is found. Finally, AD 97-19-10 requires retiring

these part-numbered plates upon reaching 2,600 hours TIS. That action was prompted by reports that cracks were discovered in four plates, three of which had been reworked in accordance with previously superseded AD 77-20-01, Amendment 39-3045 (42 FR 51565, September 29, 1977) and Amendment 39-3064 (42 FR 56600, October 27, 1977). The requirements of AD 97-19-10 are intended to detect a crack in the plate to prevent failure of the plate, failure of the main gearbox, and subsequent loss of control of the helicopter.

**Actions Since Existing AD Was Issued**

Since issuing AD 97-19-10, Amendment 39-10130 (62 FR 47933, September 12, 1997), Erickson has performed a configuration review and additional analyses of the safe life for various parts and released Erickson Service Bulletin (SB) No. 64B General-1, Revision 19, dated September 15, 2010 (SB 64B General-1). SB 64B General-1 specifies the retirement life for certain parts and assemblies as well as noting other maintenance actions. This and the previous revisions of SB 64B General-1 contain reduced or new life limits for certain parts, parts which should be removed from service, other maintenance actions, and various other provisions for certain parts. We have also reviewed Erickson SB No. 64B10-3, Revision D, dated October 15, 2007, which provides ultrasonic inspection procedures for the Main Rotor (M/R) hub horizontal hinge pins. Based on our review of this list of parts and assemblies, and an analysis of the service difficulties, we have determined that we need to propose to revise the life limit of certain critical parts, remove certain parts from service, and require additional inspections and other maintenance actions of certain parts. Failure to establish or revise a life limit or remove a part from service when there is repeated service difficulties with the part could result in failure of that part and subsequent loss of control of the helicopter.

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other helicopters of the same type design.

**Proposed AD Requirements**

The proposed AD would supersede AD 97-19-10 (62 FR 47933, September 12, 1997) to establish or revise the life limit for various parts, to remove various parts from service, to require

various inspections and other maintenance actions, and to revise the component history card or equivalent record and the airworthiness limitations section of the maintenance manual accordingly. Specifically, we propose, before further flight, to establish or to revise the retirement life for each of the following parts, and to remove from service those parts that have reached or exceeded the newly established or reduced life limit:

- M/R parts
  - Rod and bushing assembly, M/R, P/N 6410-21090-012, -013 or -014;
  - Lower plate, M/R hub, P/N 6410-23009-102;
  - Upper plate, M/R hub, P/N 6410-23011-102;
  - Swashplate, rotating, M/R, P/N 6410-24002-101;
  - Piston rod, P/N 6410-26005-104;
  - Cylinder, damper assembly, P/N 6410-26215-101;
  - M/R blade, P/N 6415-20201-045 or -047;
  - M/R blade, P/N 6415-20201-048, -049, -050, or -051;
  - M/R shaft assembly (includes shaft, P/N 6435-20078-104), P/N 6435-20078-014 or -015;
  - M/R shaft assembly (includes shaft, P/N 6435-20078-105), P/N 6435-20078-016;
  - Hub, M/R, P/N S1510-23001-005;
  - Spindle assembly, M/R, P/N S1510-23027-5;
  - Horn assembly, M/R, P/N S1510-23350-4, -6, or -8;
  - Sleeve, M/R, P/N S1510-23351-2;
  - Sleeve lockwasher, M/R, S1510-23458-0;
  - Cuff, M/R blade, P/N S1515-20320-0, -001 or -002;
  - Piston assembly, M/R tandem servo, P/N S1565-20443-0 or S1565-20443-301;
  - Fork assembly, M/R tandem servo, P/N S1565-20449 or P/N S1565-20449-301;
  - Tail Rotor (T/R) parts
    - T/R blade, P/N 65160-00001-042, -045, or -048;
    - T/R blade, P/N 65161-00001-042;
    - Bearing, T/R drive shaft, P/N SB1111-004 or -601;
    - Main Gearbox parts
      - Second stage planetary plate assembly, main gearbox assembly, P/N 6435-20231-012, -014, -015 or -016;
      - Oil cooler and support assembly, P/N 6435-60050-044; and
      - Other parts
        - Truss assembly, stabilizer, P/N 6420-66250-041.

In addition to establishing and revising the life limit for certain parts, we also propose to require, before further flight, removing from service the

following flight-critical parts due to previous service difficulties:

- Rod and bushing assembly, M/R, P/N 6410-21090-011;
- M/R blade, P/N 6415-20001-013, -014, or -015;
- Pylon stabilizer, P/N 6420-66201-010, -014, or -015;
- M/R shaft assembly, P/N 6435-20078-013;
- Oil cooler and support assembly, P/N 6435-60050-043;
- Pitch change link, rotary rudder, P/N 65113-07100-046; and
- Spindle, M/R blade, P/N S1510-23070-3.

Any part that is required to be removed from service is not eligible for installation on any helicopter.

This proposed AD also would also require the following inspections and other corrective actions:

- Within 20 hours TIS, and thereafter at intervals not to exceed 20 hours TIS, inspecting each M/R servo and control arm assembly, P/N S1565-20421-10, -11, -041, or -043, for any oil leaking from the M/R tandem servo housing assembly (servo housing), P/N S1565-20252-2. If there is any oil leaking from the servo housing, before further flight, replacing the M/R servo and control arm assembly.
  - Within 20 hours TIS or before reaching a total of 1,120 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 200 hours TIS or 12 months, whichever occurs first, performing an ultrasonic inspection (UT) of each M/R hub horizontal hinge pin, P/N S1510-23099-1 or P/N S1510-23099-001, for a crack.
  - Performing a fluorescent-magnetic particle inspection (MPI) for a crack:
    - In each second stage planetary plate assembly, P/N 6435-20231-016, within 150 hours TIS, or before reaching 1,450 hours TIS, whichever occurs later;
    - In each M/R shaft, P/N 6435-20078-104, within 150 hours TIS or before reaching 1,450 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 650 hours TIS;
    - In each M/R shaft, P/N 6435-20078-105, within 150 hours TIS or before reaching 1,450 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 1,450 hours TIS; and
    - In each M/R shaft assembly, P/N 6435-20078-014, -015, or -016, at each overhaul of the main gearbox assembly, P/N 6435-20400-053, -054, -058, -060, -062, -063, -064, -065, or -066.
  - Within 150 hours TIS or before reaching 3,375 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 3,375 hours TIS,

performing a fluorescent-penetrant inspection (FPI) of each housing lug on each M/R tandem servo housing assembly, P/N S1565-20252-2.

- If a there is a crack, before further flight, replacing the cracked part.
- At each overhaul of the damper assembly, P/N 6410-26200-042, replacing certain parts with parts that have zero (0) hours TIS.

#### Differences Between the Proposed AD and the Service Information

This proposed AD contains only those parts for the Model S-64E helicopters whose life limit has either been reduced or added for an existing P/N, whereas SB 64B General-1 also contains parts whose life limits have been extended. As a result, this proposed AD does not include all of the parts or P/Ns that are listed in SB 64B General-1.

#### Costs of Compliance

We estimate that this proposed AD would affect 13 helicopters of U.S. registry, and the proposed actions would take the following number of estimated work hours to accomplish:

- 26 work hours (2 work hours per helicopter) for the fleet to review the helicopter records or to remove a part to determine if an affected part is installed;
- 845 work hours (65 work hours per helicopter) for the fleet to replace the parts or assemblies on or before reaching the retirement lives stated in Table 1 of the proposed AD, assuming an annual usage of 600 hours TIS;
- 287 work hours per helicopter to replace all the parts or assemblies listed in Table 2 of the proposed AD;
- 130 work hours (10 work hours per helicopter) for the fleet to inspect the M/R servo housing assemblies for an oil leak, assuming each inspection would take approximately 0.25 work hour per helicopter and would be accomplished 40 times annually;
- Approximately 293 work hours (22.5 work hours per helicopter) for the fleet to UT inspect each M/R hub horizontal hinge pin, assuming that each inspection would take 7.5 work hours per helicopter and would be accomplished 3 times annually;
- 288 work hours (48 work hours per helicopter) to perform an MPI of each main gearbox second stage lower planetary plate and second stage planetary plate assembly assuming 6 helicopters would be inspected annually;
- 192 work hours (32 work hours per helicopter) to perform an MPI of each M/R shaft and M/R shaft assembly, assuming 6 helicopters would be inspected annually, and

- 96 work hours (32 work hours per helicopter) to perform an FPI of each M/R tandem servo housing assembly, assuming 3 helicopters would be inspected annually.

Therefore, we estimate that it would take approximately 2,157 work hours to accomplish the proposed actions at a cost of \$183,345, using an average labor rate \$85 per work hour. Replacement parts would cost approximately:

- \$5,363,449 (\$412,573 per helicopter) to replace the parts or assemblies on the entire fleet on or before reaching the proposed retirement lives, assuming parts for 13 helicopters would require replacement; and
- \$2,594,400 per helicopter to replace the parts or assemblies that are listed in Table 2 of the proposed AD.

Using these assumptions, the estimated total cost for the required parts would be approximately \$7,957,849. Based on these estimated amounts using these assumptions, we estimate the total cost impact of the proposed AD on the U.S. operators would be \$8,141,194.

#### 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 helicopters 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, 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 to the extent that it justifies making a regulatory distinction; 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 an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

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

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Amendment 39–10130 (62 FR 47933, September 12, 1997), and adding the following new AD:

**Sikorsky Aircraft Corporation—Manufactured (Sikorsky) Model Helicopters (Type Certificate Currently Held By Erickson Air-Crane Incorporated):** Docket No. FAA–2013–0454; Directorate Identifier 2009–SW–81–AD.

**(a) Applicability**

This AD applies to Sikorsky Model CH–54A helicopters, now under the Erickson Air-Crane Incorporated (Erickson) Model S–64E type certificate, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as fatigue cracking in a flight critical

component, failure of the component, and subsequent loss of control of the helicopter.

**(c) Affected ADs**

This AD supersedes AD 97–19–10, Amendment 39–10130 (62 FR 47933, September 12, 1997).

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

(1) Before further flight, for each part listed in Table 1 to paragraph (e) of this AD:

(i) Remove any part that has reached or exceeded its newly established or revised retirement life.

(ii) Record the newly established or revised retirement life for each part on the component history card or equivalent record.

(iii) Make pen and ink changes or insert a copy of this AD into the Airworthiness Limitations section of the maintenance manual to establish or revise the retirement life for each part that is listed in Table 1 of this AD.

TABLE 1 TO PARAGRAPH (E) OF THIS AD—PARTS WITH NEW OR REVISED LIFE LIMITS

Part name	Part number (P/N)	Retirement life
Rod and bushing assembly, main rotor (M/R) .....	6410–21090–012 .....	5,700 hours time-in-service (TIS) or 60 months since the initial installation on any helicopter, whichever occurs first.
Rod and bushing assembly, M/R .....	6410–21090–013 or –014 .....	5,700 hours TIS.
Lower plate, M/R hub .....	6410–23009–102 .....	3,000 hours TIS.
Upper plate, M/R hub .....	6410–23011–102 .....	3,000 hours TIS.
Swashplate, rotating, M/R .....	6410–24002–101 .....	12,860 hours TIS.
Piston rod .....	6410–26005–104 .....	10,500 hours TIS.
Cylinder, damper assembly .....	6410–26215–101 .....	7,300 hours TIS.
M/R blade .....	6415–20201–045 or –047 .....	3,300 hours TIS.
M/R blade .....	6415–20201–048, –049, –050, or –051 ...	20,000 hours TIS.
Truss assembly, stabilizer .....	6420–66250–041 .....	4,720 hours TIS.
M/R shaft assembly (includes shaft, P/N 6435–20078–104).	6435–20078–014 or –015 .....	2,600 hours TIS.
M/R shaft assembly (includes shaft, P/N 6435–20078–105).	6435–20078–016 .....	5,000 hours TIS.
Second stage planetary plate assembly, main gearbox assembly.	6435–20231–012, –014, or –015 .....	1,300 hours TIS.
Second stage planetary plate assembly, main gearbox assembly.	6435–20231–016 .....	2,600 hours TIS.
Oil cooler and support assembly .....	6435–60050–044 .....	9,885 hours TIS.
Tail rotor (T/R) blade .....	65160–00001–042, –045, or –048 .....	23,300 hours TIS.
T/R blade .....	65161–00001–042 .....	23,300 hours TIS.
Hub, M/R .....	S1510–23001–005 .....	3,000 hours TIS.
Spindle assembly, M/R .....	S1510–23027–5 .....	5,675 hours TIS.
Horn assembly, M/R .....	S1510–23350–4, –6, or –8 .....	9,710 hours TIS.
Sleeve, M/R .....	S1510–23351–2 .....	12,930 hours TIS.
Sleeve lockwasher, M/R .....	S1510–23458–0 .....	2,700 hours TIS.
Cuff, M/R blade .....	S1515–20320–0 .....	6,410 hours TIS.
Cuff, M/R blade .....	S1515–20320–001 or –002 .....	12,930 hours TIS.
Piston assembly, M/R tandem servo .....	S1565–20443–0 or S1565–20443–301 ....	8,100 hours TIS.
Fork assembly, M/R tandem servo .....	S1565–20449 or S1565–20449–301 .....	8,100 hours TIS.
Bearing, T/R drive shaft .....	SB1111–004 or –601 .....	1,000 hours TIS or 12 months while installed on any helicopter, whichever occurs first.

**Note to Table 1 to paragraph (e) of this AD:** The list of parts in Table 1 to paragraph (e) of this AD contains only a portion of the

life-limited parts for this model helicopter and is not an all-inclusive list.

(2) Before further flight, remove from service any part with a P/N listed in Table 2 to Paragraph (e) of this AD, regardless of

the part's TIS. The part numbers listed in Table 2 to paragraph (e)(2) of this AD are not eligible for installation on any helicopter.

**TABLE 2 TO PARAGRAPH (e) OF THIS AD—PARTS TO BE REMOVED FROM SERVICE**

Part name	P/N
Rod and bushing assembly, M/R.	6410-21090-011
M/R blade .....	6415-20001-013, -014, or -015
Pylon stabilizer .....	6420-66201-010, -014, or -015
M/R shaft assembly .....	6435-20078-013
Oil cooler and support assembly.	6435-60050-043
Pitch change link, rotary rudder.	65113-07100-046
Spindle, M/R blade .....	S1510-23070-3

(3) Within 20 hours TIS, and thereafter at intervals not to exceed 20 hours TIS, visually inspect each M/R servo and control arm assembly, P/N S1565-20421-10, -11, -041, or -043, and determine if there is any oil leaking from the M/R tandem servo housing assembly (servo housing), P/N S1565-20252-2. If there is any oil leaking from the servo housing, before further flight, replace the M/R servo and control arm assembly.

(4) Within 20 hours TIS or before reaching 1,120 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 200 hours TIS or 12 months, whichever occurs first, ultrasonic (UT) inspect each M/R hub horizontal hinge pin (hinge pin), P/N S1510-23099-1 or P/N S1510-23099-001, for a crack in accordance with the Accomplishment Instructions, paragraphs 2.A through 2.C, of Erickson Service Bulletin (SB) No. 64B10-3, Revision D, dated October 15, 2007, except you are not required to contact Erickson nor send hinge pins to them. A non-destructive testing (NDT) UT Level I Special, Level II, or Level III inspector who is qualified under the guidelines established by ASNT SNT-TC-1A, ISO 9712, or an FAA-accepted equivalent qualification standard for NDT inspection and evaluation, must perform the UT inspection.

(5) Within 150 hours TIS or before reaching 1,450 hours TIS, whichever occurs later, perform a fluorescent-magnetic particle inspection (MPI) of each second stage planetary plate assembly, P/N 6435-20231-016, for a crack.

(6) Within 150 hours TIS or before reaching 1,450 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 650 hours TIS, perform an MPI of each M/R shaft, P/N 6435-20078-104, for a crack, paying particular attention to the lower spline area.

(7) Within 150 hours TIS or before reaching 1,450 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 1,450 hours TIS, perform an MPI of each M/R shaft, P/N 6435-20078-105, for a crack, paying particular attention to the lower spline area.

(8) Within 150 hours TIS or before reaching 3,375 hours TIS, whichever occurs later, and

thereafter at intervals not to exceed 3,375 hours TIS, perform a fluorescent penetrant inspection of each housing lug on each servo housing, P/N S1565-20252-2, for a crack.

(9) At each overhaul of the main gearbox assembly, P/N 6435-20400-053, -054, -058, -060, -062, -063, -064, -065, or -066, perform an MPI of the entire shaft of each M/R shaft assembly, P/N 6435-20078-014, -015, or -016, for a crack, paying particular attention to the rotating swashplate spherical bearing ball travel area, which is located approximately ten inches above the upper roller bearing journal shoulder.

(10) If there is a crack in any part, before further flight, replace the cracked part.

(11) At each overhaul of the damper assembly, P/N 6410-26200-042, replace the following parts with airworthy parts that have zero (0) hours TIS:

(i) All Air Force-Navy Aeronautical Standard (AN), Aerospace Standard (AS), Military Standard (MS), and National Aerospace Standard (NAS) nuts, bolts, washers, and packings, except packing, P/N MS28775-011, installed on stud, P/N SHF111-11SN-12A;

(ii) Lock washer, P/N SS5073-2;

(iii) Nut, P/N SS5081-05;

(iv) Felt seal, P/N S1510-26017;

(v) Retaining ring, P/N UR106L; and

(vi) Nut, P/N 6410-26214-101.

#### (f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Kohner, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222-5170; email [7-avs-asw-170@faa.gov](mailto:7-avs-asw-170@faa.gov).

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

#### (g) Additional Information

Erickson Service Bulletin (SB) No. 64B General-1, Revision 19, dated September 15, 2010, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Erickson Air-Crane Incorporated, ATTN: Chris Erickson/ Compliance Officer, 3100 Willow Springs Rd, PO Box 3247, Central Point, OR 97502, telephone (541) 664-5544, fax (541) 664-2312, email address [cerickson@ericksonaircrane.com](mailto:cerickson@ericksonaircrane.com). You may review a copy of this information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

#### (h) Subject

Joint Aircraft Service Component (JASC) Code: 6200: Main Rotor System; 6300: Main Rotor Drive System; 6410: Tail Rotor Blades; 6500: Tail Rotor Drive System.

Issued in Fort Worth, Texas, on May 17, 2013.

**Kim Smith,**

*Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013-12523 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2013-0425; Directorate Identifier 2012-NM-224-AD]

RIN 2120-AA64

#### Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747 airplanes. This proposed AD was prompted by reports of cracking in the forward and aft inner chord of the body station (BS) 2598 bulkhead near the upper corners of the cutout for the horizontal stabilizer rear spar, and cracking in the bulkhead upper and lower web panels near the inner chord to shear deck connection. This proposed AD would require doing repetitive inspections for cracking in the bulkhead splice fitting, frame supports, forward and aft inner chords, and floor support; doing an inspection for cracking in the bulkhead upper web, doubler, and bulkhead lower web; and corrective actions if necessary; for certain airplanes, inspections for cracking in the repaired area of the bulkhead, and corrective actions if necessary; for certain airplanes, support frame modification and support frame inspections, and related investigative and corrective actions, if necessary; for certain airplanes, repetitive support frame post-modification inspections and inspections for cracking in the hinge support, and related investigative and corrective actions if necessary; for certain airplanes, a one-time inspection of the frame web and upper shear deck (floor support) chord aft side for fasteners; and a one-time inspection of the upper forward inner chord, frame support fitting and splice fitting, for the installation of certain fasteners; and related investigative and corrective actions if necessary; for certain airplanes, a one-time inspection of the upper forward inner chord, frame

support fitting and splice fitting for the installation of certain fasteners; a one-time inspection for any repair installed on the left and right side of the aft inner chord, and related investigative and corrective actions, if necessary; for certain airplanes, a one-time inspection of the support frame outer chord for cracking, and repair if necessary; and repetitive support frame post-repair inspections, and corrective actions, if necessary. We are proposing this AD to detect and correct fatigue cracking of the BS 2598 bulkhead structure, which could adversely affect the structural integrity of the bulkhead and the horizontal stabilizer support structure and result in loss of controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by July 12, 2013.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

#### Examining the AD Docket

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

available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6432; fax: 425-917-6590; email: [bill.ashforth@faa.gov](mailto:bill.ashforth@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2013-0425; Directorate Identifier 2012-NM-224-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

##### Discussion

We received reports of cracking in the forward and aft inner chord of the BS 2598 bulkhead near the upper corners of the cutout for the horizontal stabilizer rear spar, and cracking in the bulkhead upper and lower web panels near the inner chord to shear deck connection. This condition, if not corrected, could result in fatigue cracking of the BS 2598 bulkhead structure, which could result in inability of the structure to carry horizontal stabilizer flight loads, and loss of controllability of the airplane.

##### Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747-53A2427, Revision 6, dated July 14, 2011; and Boeing Alert Service Bulletin 747-53A2473, Revision 4, dated December 1, 2011. For information on the procedures and compliance times, see this service information at <http://www.regulations.gov> by searching for Docket No. FAA-2013-0425.

##### FAA’s Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition

described previously is likely to exist or develop in other products of the same type design.

##### Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under “Differences Between the Proposed AD and the Service Information.”

The phrase “related investigative actions” might be used in this proposed AD. “Related investigative actions” are follow-on actions that: (1) Are related to the primary actions, and (2) are actions that further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase “corrective actions” might be used in this proposed AD. “Corrective actions” are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

##### Differences Between the Proposed AD and the Service Information

Where Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2427, Revision 6, dated July 14, 2011, specifies accomplishing inspections for cracks in forward and aft inner chords, splice fittings, floor supports, and upper and lower web panels, this AD also requires doing an open-hole high frequency eddy current (HFEC) inspection of the doubler. Figure 2 of Boeing Alert Service Bulletin 747-53A2427, Revision 6, dated July 14, 2011, includes the inspections.

Where paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 747-53A2427, Revision 6, dated July 14, 2011; or 747-53A2473, Revision 4, dated December 1, 2011; specify to contact Boeing for repair data and do the repair, this AD requires doing those repairs in accordance with a method approved by the FAA.

If cracking is found in any doubler during any inspection specified by paragraph (g) of this proposed AD, this proposed AD would require repairing using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

##### Costs of Compliance

We estimate that this proposed AD affects 165 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

## ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection .....	24 work-hours × \$85 per hour = \$2,040 per inspection cycle.	\$0	\$2,040 per inspection cycle.	\$336,600 per inspection cycle.
Support frame modification .....	315 work-hours × \$85 per hour = \$26,775.	0	\$26,775 .....	Up to \$4,417,875.
Support frame upper corner fastener inspection.	16 work-hours × \$85 per hour = \$1,360.	0	\$1,360 .....	Up to \$224,400.
Support frame post-modification inspection.	200 work hours × \$85 per hour = \$17,000.	0	\$17,000 .....	\$2,805,000.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this proposed AD.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**The Boeing Company:** Docket No. FAA–2013–0425; Directorate Identifier 2012–NM–224–AD.

#### (a) Comments Due Date

We must receive comments by July 12, 2013.

#### (b) Affected ADs

This AD affects AD 2010–14–07, Amendment 39–16352 (75 FR 38001, July 1, 2010).

#### (c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011.

#### (d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

#### (e) Unsafe Condition

This AD was prompted by reports of cracking in the forward and aft inner chord of the body station (BS) 2598 bulkhead near the upper corners of the cutout for the horizontal stabilizer rear spar, and cracking in the bulkhead upper and lower web panels near the inner chord to shear deck connection. We are issuing this AD to detect

and correct fatigue cracking of the BS 2598 bulkhead structure, which could adversely affect the structural integrity of the bulkhead and the horizontal stabilizer support structure and result in loss of controllability of the airplane.

#### (f) Compliance

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

#### (g) Inspections of the Bulkhead (Support Frame)

For airplanes on which the bulkhead (support frame) modification specified in Boeing Service Bulletin 747–53A2473 has not been accomplished: At the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011, except as provided by paragraph (m)(1), (m)(2), or (m)(3), as applicable, of this AD, do an open-hole and surface high frequency eddy current (HFEC) inspection for cracking in the bulkhead (support frame) which includes the bulkhead splice fitting, frame supports, forward and aft inner chords, and floor support; do a surface HFEC inspection for cracking in the bulkhead upper web and doubler; do an open-hole and surface HFEC inspection for cracking in the bulkhead lower web; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011, except as required by paragraphs (m)(4), (m)(5) and (m)(6) of this AD, and except as provided by paragraph (h) of this AD. Do all applicable corrective actions before further flight. Repeat the applicable inspections, thereafter, at the applicable times in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011. Doing the modification required by paragraph (j) of this AD terminates the repetitive inspections required by this paragraph.

#### (h) Interim Modification

For airplanes in groups 1 and 2 as identified in Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011, on which no cracking was found during any inspection required by paragraph (g) of this AD: At the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011, except as provided by paragraph (m)(2) of this AD, do the interim modification, in accordance with

the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011. Doing the interim modification terminates the repetitive inspection requirement of paragraph (g) of this AD in the area of the modification only. The repetitive inspections of the bulkhead lower web, as specified in paragraph (g) of this AD, must be done. If the aft inner chord repair or upper web repair specified in Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011, has been accomplished, an interim modification on the side of the airplane that has the repair is not required by this paragraph.

**(i) Post-Repair Inspection or Post-Interim Modification Inspection**

For airplanes on which an interim modification, or aft inner chord repair, or upper web repair has been done as specified in paragraph (g) or (h) of this AD: At the applicable times specified in paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011, except as specified in paragraph (m)(1), (m)(2), or (m)(3), as applicable, of this AD, do the actions specified in paragraph (i)(1) and (i)(2) of this AD, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011, except as required by paragraph (m)(4) of this AD. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at the applicable intervals specified in paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011. Doing the modification required by paragraph (j) of this AD terminates the repetitive inspections required by this paragraph.

(1) Do forward side surface HFEC inspections for cracking of the bulkhead forward inner chord, splice fitting, and frame support.

(2) Do surface and open-hole HFEC inspections for cracking in the repaired area of the bulkhead.

**(j) Bulkhead (Support Frame) Modification and Inspections**

For airplanes on which the bulkhead (support frame) modification specified in Boeing Alert Service Bulletin 747–53A2473, dated March 24, 2005; Revision 1, dated February 20, 2007; Revision 2, dated August 28, 2009; Revision 3, dated July 14, 2011; or Revision 4, dated December 1, 2011, has not been done as of the effective date of this AD: At the applicable time in tables 2 and 3 of paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, do the bulkhead (support frame) modification and inspections and all applicable related investigative and corrective actions; in accordance with steps 3.B.3., 3.B.4., and 3.B.5. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, except as required by paragraph (m)(4) of this AD. Do all applicable related investigative and corrective actions before further flight. Doing

the modification in this paragraph terminates the inspections required by paragraphs (g) and (i) of this AD.

**(k) Post Modification Inspections**

(1) For airplanes on which the bulkhead (support frame) modification has been done as specified in Boeing Service Bulletin 747–53A2473, dated March 24, 2005; Revision 1, dated February 20, 2007; Revision 2, dated August 28, 2009; Revision 3, dated July 14, 2011; or Revision 4, dated December 1, 2011: Except as provided by paragraphs (m)(7) and (m)(8) of this AD, at the applicable time in tables 6, 7, 8, and 9 of paragraph 1.E., “Compliance” of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, do support frame post-modification inspections, and open-hole HFEC inspection for cracking in the hinge support, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, except as required by paragraph (m)(4). Do all applicable related investigative and corrective actions before further flight. Repeat the inspections thereafter at the applicable times in tables 6, 7, 8, and 9 of paragraph 1.E., “Compliance,” of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011.

(2) For airplanes on which the support frame modification has been done as specified in Boeing Service Bulletin 747–53A2473, Revision 1, dated February 20, 2007: Except as specified in paragraphs (m)(7) and (m)(8) of this AD, at the applicable time in tables 4 and 5 of paragraph 1.E., “Compliance” of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, do a one-time general visual inspection of the frame web and upper shear deck (floor support) chord aft side for fasteners that were installed as part of an inner chord repair removal; and a one-time general visual inspection of the upper forward inner chord, frame support fitting and splice fitting, for the installation of certain fasteners; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, except as required by paragraph (m)(4) of this AD. Do all applicable related investigative and corrective actions at the applicable times specified in tables 4 and 5 of paragraph 1.E., “Compliance” of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011.

(3) For airplanes on which the support frame modification has been done as specified in Boeing Service Bulletin 747–53A2473, dated March 24, 2005: Except as specified in paragraphs (m)(7) and (m)(8) of this AD, at the applicable time in tables 5 and 10 of paragraph 1.E., “Compliance” of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, do a one-time general visual inspection of the upper forward inner chord, frame support fitting, and splice fitting for the installation of certain fasteners; a one-time general visual inspection for any repair installed on the left and right side of the aft inner chord; and do

all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, except as required by paragraph (m)(4) of this AD. Do all applicable related investigative and corrective actions at the applicable times specified in tables 5 and 10 of paragraph 1.E., “Compliance” of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011.

(4) For airplanes on which a post-modification inspection was done in accordance with paragraph 3.B.8. of Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2473, Revision 3, dated July 14, 2011: Except as required by paragraphs (m)(7) and (m)(8) of this AD, at the applicable time in table 11 of paragraph 1.E., “Compliance” of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, do a one-time surface HFEC inspection of the support frame outer chord for cracking, in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011. If any cracking is found, repair before further flight, using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

**(l) Post-Modification Post-Repair Inspections**

For airplanes on which post-modification inspection cracks were repaired by doing the installation of an upper or lower corner post-modification web crack repair as specified in Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011: At the applicable times specified in tables 6 and 8 of paragraph 1.E., “Compliance” of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, do a bulkhead (support frame) post-repair inspection, and do all applicable corrective actions, in accordance with paragraph a., b., or c. of Part 4 of paragraph 3.B.8 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011, as applicable, except as required by paragraph (m)(4) of this AD. Repeat the inspection, thereafter, at the applicable times specified in tables 6 and 8 of paragraph 1.E., “Compliance,” of Boeing Service Bulletin 747–53A2473, Revision 4, dated December 1, 2011.

**(m) Exceptions**

(1) Where Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011, specifies a compliance time after the date on Revision 2 of this service bulletin, this AD requires compliance within the specified compliance time as of August 28, 2001 (the effective date of AD 2001–15–03, Amendment 39–12337 (66 FR 38365, July 24, 2001)).

(2) Where Boeing Alert Service Bulletin 747–53A2427, Revision 6, dated July 14, 2011, specifies a compliance time after the date on Revision 4 of this service bulletin, this AD requires compliance within the specified compliance time as of April 13, 2006 (the effective date of AD 2006–05–06, Amendment 39–14503 (71 FR 12125, March 9, 2006)).

(3) Where Boeing Alert Service Bulletin 747-53A2427, Revision 6, dated July 14, 2011, specifies a compliance time after the date on Revision 6 of this service bulletin, this AD requires compliance within the specified compliance time "after the effective date of this AD."

(4) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747-53A2427, Revision 6, dated July 14, 2011; or Boeing Service Bulletin 747-53A2473, Revision 4, dated December 1, 2011; specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(5) If, during any inspection required by paragraph (g) of this AD, any cracking is found in the doubler, before further flight, repair, using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(6) Where Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2427, Revision 6, dated July 14, 2011, specifies accomplishing inspections for cracks for forward and aft inner chords, splice fittings, floor supports, and upper and lower web panels, this AD also requires doing an open-hole HFEC inspection of the doubler.

(7) Where Boeing Service Bulletin 747-53A2473, Revision 4, dated December 1, 2011, specifies a compliance time after the date on Revision 2 of the service bulletin, this AD requires compliance within the specified compliance time as of August 5, 2010 (the effective date of AD 2010-14-07, Amendment 39-16352 (75 FR 38001, July 1, 2010)).

(8) Where Boeing Service Bulletin 747-53A2473, Revision 4, dated December 1, 2011, specifies a compliance time after the date on Revision 3 or 4 of the service bulletin, this AD requires compliance within the specified compliance time "after the effective date of this AD."

**(n) Terminating Action for Certain Requirements of AD 2010-14-07, Amendment 39-16352 (75 FR 38001, July 1, 2010)**

(1) Accomplishing the inspections, repairs, and modification in accordance with Boeing Service Bulletin 747-53A2473, Revision 4, dated December 1, 2011, is a terminating action for the corresponding inspections, repairs, and modification at the STA 2598 support frame required by paragraphs (i), (j), (k)(1), (m), (n), (o), (p), (q), (r), (s), (t), (u), and (v) of AD 2010-14-07, Amendment 39-16352 (75 FR 38001, July 1, 2010). When Boeing Service Bulletin 747-53A2473, Revision 4, dated December 1, 2011, specifies to contact Boeing for repair instructions, the repair instructions must be approved by the FAA in accordance with paragraph (o) of this AD. All provisions of AD 2010-14-07 that are not specifically referenced in this paragraph remain fully applicable and must be complied with.

(2) Accomplishing the inspections, repairs and interim modification in accordance with Boeing Service Bulletin 747-53A2427, Revision 6, dated July 14, 2011, is a

terminating action for the corresponding inspections, repairs and interim modification at the STA 2598 bulkhead required by paragraphs (i), (j), (o), (s), (t), (u), and (v) of AD 2010-14-07, Amendment 39-16352 (75 FR 38001, July 1, 2010). When Boeing Service Bulletin 747-53A2427, Revision 6, dated July 14, 2011, specifies to contact Boeing for repair data, the repair data must be approved by the FAA in accordance with paragraph (o) of this AD. All provisions of AD 2010-14-07 that are not specifically reference in this paragraph remain fully applicable and must be complied with.

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

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

**(p) Related Information**

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6432; fax: 425-917-6590; email: [bill.ashforth@faa.gov](mailto:bill.ashforth@faa.gov).

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on May 17, 2013.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2013-12618 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA-2013-0282; Airspace Docket No. 13-AAL-3]

**Proposed Amendment of Class E Airspace; Gustavus, AK**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Gustavus Airport, Gustavus, AK. Decommissioning of the Gustavus Nondirectional Radio Beacon (NDB) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also would adjust the geographic coordinates of the airport.

**DATES:** Comments must be received on or before July 12, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9826. You must identify FAA Docket No. FAA-2013-0282; Airspace Docket No. 13-AAL-3, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4537.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2013-0282 and Airspace Docket No. 13-AAL-3) and be submitted in triplicate to the Docket Management System (see

**ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2013-0282 and Airspace Docket No. 13-AAL-3". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/airports\\_airtraffic/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

#### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface at Gustavus Airport, Gustavus, AK. Airspace

reconfiguration is necessary due to the decommissioning of the Gustavus NDB. The geographic coordinates of the airport would be adjusted in accordance with the FAA's aeronautical database. This action would enhance the safety and management of aircraft operations at Gustavus Airport, Gustavus, AK.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Gustavus Airport, Gustavus, AK.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### AAL AK E5 Gustavus, AK [Amended]

Gustavus Airport, AK  
(Lat. 58°25'31" N., long. 135°42'27" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Gustavus Airport and within 4 miles each side of the 229° bearing of the airport extending from the 6.8-mile radius to 16.7 miles southwest of the airport, and within 3 miles northeast and 7 miles southwest of the airport 135° bearing extending from the 6.8-mile radius to 24 miles southeast of the airport.

Issued in Seattle, Washington, on May 15, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013-12625 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-13-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 64

[Docket No. USCG-2012-0054]

RIN 1625-AA97

#### Waiver for Marking Sunken Vessels With a Light at Night

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rulemaking would revise Coast Guard regulations to

implement section 301 of the Coast Guard and Maritime Transportation Act of 2004. This Act authorized the Commandant to waive the statutory requirement to mark sunken vessels with a light at night if the Commandant determines that placing a light would be impractical and waiving the requirement would not create an undue hazard to navigation. The Commandant has delegated to the Coast Guard District Commander in whose district the sunken vessel is located the authority to grant this waiver.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before July 29, 2013 or reach the Docket Management Facility by that date.

**ADDRESSES:** Comments must be identified by Coast Guard docket number USCG–2012–0054 and may be submitted 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.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents for Preamble**

- I. Public Participation and Request for Comments
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- K. Energy Effects
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- M. Environment

#### **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–2012–0054), indicate the specific section of this document to which each comment applies, and provide the 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> and insert “USCG–2012–0054” in the “Search” box. Locate this notice in the results, click on “Submit a Comment,” and follow the instructions to submit your comment. 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>, insert “USCG–2012–0054” in the “Search” box, and locate this notice in the search results. Use the filters on the left side of the page to view comments and other documents. 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. 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**

- CFR Code of Federal Regulations
- COTP Captain of the Port
- MISLE Marine Information for Safety and Law Enforcement
- NAICS North American Industry Classification System
- NPRM Notice of proposed rulemaking
- Pub. L. Public Law
- § Section symbol
- U.S.C. United States Code

#### **III. Background**

The Coast Guard proposes to revise its regulations in 33 CFR part 64, which prescribe rules relating to the marking of structures, sunken vessels and other obstructions for the protection of maritime navigation. These regulations apply to all sunken vessels in the navigable waters or waters above the continental shelf of the United States. Current regulations in 33 CFR 64 require an owner of a vessel, raft, or other craft that is wrecked and sunk in a navigable channel to immediately mark it with a buoy or a beacon during the day and a light at night, and maintain the markings until the wreck is removed. (Current wording uses the phrase “buoy or daymark,” which we are replacing with “buoy or beacon” in this subpart. This is a more precise phrase encompassing floating and fixed aids to navigation.) There are no provisions for exemptions to this regulation. However, if, due to conditions of the waterway, the Coast Guard determines that marking the wreck with a light is impracticable and that not marking the

wreck does not pose an undue hazard to navigation, the Commandant is authorized by statute to grant a waiver from the lighting requirement. Such a waiver could save owners the cost of marking sunken vessels with a light without jeopardizing navigational safety.

For that reason, the primary purpose of this proposed rulemaking is to add to the regulations a provision in section 301 of the Coast Guard and Maritime Transportation Act of 2004 (“the Act”) (Pub. L. 108–293), codified at 33 U.S.C. 409, that authorizes the Commandant to waive the requirement to mark a sunken vessel, raft, or other craft with a light at night if the Commandant determines it would be “impracticable and granting such a waiver would not create an undue hazard to navigation.” The Commandant has delegated to the District Commander the authority to grant this waiver. (See Aids to Navigation Manual-Administration (COMDTINST M16500.7A)).

In addition, the Coast Guard believes that this rulemaking is a good opportunity to make editorial and organizational changes to 33 CFR part 64 subpart B to make the regulations clearer to the regulated industry.

**IV. Discussion of Proposed Rule**

The Coast Guard is proposing two different areas of changes to 33 CFR part 64. The first change, discussed above, is the addition of a provision allowing owners of sunken vessels, rafts, and other craft to request a waiver from the requirement to mark the sunken vessel with a light at night. Additionally, we are proposing some organizational and clarifying edits to 33 CFR 64.11 to improve readability.

*A. Waiver of Lighted Buoy Provision*

Under the current requirement in 33 CFR 64.11(a) (and 64.16), all owners and operators of vessels sunk in navigational channels must place and maintain either a lighted buoy or a fixed light

over the wreck until the wreck is removed. However, this requirement has created some problems for owners and operators of sunken vessels in the past. In certain waterways, particularly in the Western rivers, the light may become disabled repeatedly due to environmental conditions or the conditions of the waterway, forcing the owner or operator of the sunken vessel to undertake multiple maintenance trips to repair the light before the wreck is removed, which can become costly. Furthermore, as a lighted buoy is generally heavier than an unlighted one, the presence of the light can actually increase the probability that the buoy becomes submerged, negating its effectiveness both by day and night. Similarly, fixed lights marking the wreck can be damaged by environmental conditions. Being able to grant waivers for the lighting requirement, in cases where installing a lighted buoy or fixed light would be impracticable, would provide a relief of burden for owners and operators of sunken vessels without posing undue hazards to navigation.

Given that the Coast Guard now has the statutory authority to do so based on Section 301 of the Act, we are proposing to amend the regulations in 33 CFR 64.11 and 64.13 to include provisions for requesting and granting such a waiver for marking a sunken vessel, raft, or other craft.

We propose to add in paragraph (a) of 33 CFR 64.13 a provision that an owner and/or operator of a sunken vessel seeking a waiver of the requirement to mark a wreck with a light at night may make a request to the District Commander in whose district the sunken vessel is located. Similarly, paragraph (b) would be added to allow the District Commander to waive the marking of a wreck with a light at night. As per the requirements of Section 301 of the Act, the District Commander would have to determine that marking the sunken vessel with a lighted buoy or

a fixed light would be impractical, and that granting a waiver from that requirement would not cause an undue hazard to navigation. A reference to the waiver provision would also be added to 33 CFR 64.11(a). We are also including information about how to contact the District Commander.

*B. Organizational and Clarifying Edits*

In order to improve readability, the Coast Guard proposes some additional minor wording and organizational edits to 33 CFR 64.11 and 64.13.

- As stated above, we propose to place the waiver provisions in § 64.13. To accommodate that, we propose to redesignate existing paragraphs (a) and (b) in § 64.13 as (g) and (h), respectively, in § 64.11. This will locate all of the marking requirements in § 64.11.

- We are breaking the existing § 64.11(a) into two paragraphs to reflect its two components. The first sentence, relating to vessels sunk in navigable channels, remains as § 64.11(a), and now includes a reference to the waiver provision.

- The second sentence of the current § 64.11(a) would be designated as § 64.11(b), which relates to the marking of sunken vessels outside of navigable channels that still pose a hazard to navigation.

- We are moving the reportable information requirements from § 64.11(b) to § 64.11(c) and (d), which relate to any information about sunken vessels or obstructions reported to the Coast Guard, and clarifying them. The Coast Guard proposes to slightly amend the four reporting requirements relating to sunken hazards to be more specific about the information they require. For example, in proposed § 64.11(c)(1) instead of merely requiring a “name and description,” we are proposing to require “name and description, . . . including type and size.” The existing and proposed citation for each of the requirements is listed in Table 1 below.

TABLE 1—EXISTING AND PROPOSED REQUIREMENTS AND CITATIONS

Current reporting requirement	Existing citation	Proposed reporting requirement	Proposed citation
Name and description of the sunken vessel .....	64.11(b)(1) ...	Name and description of the sunken vessel, raft, or other craft, including type and size.	64.11(c)(1).
Accurate description of the location of the vessel .....	64.11(b)(2) ...	Accurate description of the location of the sunken vessel, raft, or other craft, including how the position was determined.	64.11(c)(2).
Depth of water over the vessel .....	64.11(b)(3) ...	Water depth .....	64.11(c)(3).
Location and type of marking established, including color and shape of buoy or other daymark and characteristic of the light.	64.11(b)(4) ...	Location and type of marking established, including color and shape of buoy or other beacon and characteristic of the light.	64.11(c)(4).

- Paragraphs (c) and (d) in § 64.11 have been redesignated to (e) and (f), respectively.
- We are substituting the term “owners and/or operators” for the term “owners” in the proposed regulations with regard to sunken vessels. We believe that this would help to ensure full and prompt compliance with the regulations in the event that a non-owner is operating the vessel at the time of sinking.
- We are substituting the term “vessel, raft, or other craft” for the term “vessel” to ensure that all sunken craft are accounted for.
- We are replacing instances of the word “shall” with “must” to improve readability.

**V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on statutes and 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 regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and

Budget has not reviewed it under that Order.

A draft regulatory assessment follows: Current regulations in 33 CFR 64.11(a) require an owner of a vessel, raft, or other craft that is wrecked and sunk in a navigable channel to immediately mark it with a buoy or a beacon during the day and a light at night, and maintain the markings until the wreck is removed. There are no provisions for exemptions to this regulation. However, if the Coast Guard determines that marking the wreck with a light at night is impracticable and does not pose an undue hazard to navigation, the Commandant is authorized to grant a waiver from the lighting requirement. Such a waiver would benefit owners of sunken vessels without jeopardizing navigational safety. Table 2 summarizes the cost and benefits of the proposed rule.

TABLE 2—SUMMARY OF COSTS AND BENEFITS

Category	Proposed rule
Applicability .....	Owner/operator of a vessel sunk in navigable channels that request a waiver from the requirement to provide a lighted marker if providing an unlighted marker does not create a hazard to navigation.
Affected population .....	6 sunken vessels per year.
Industry Annualized costs (7% discount rate) .....	\$217 per year.
Government Annualized Costs (7% discount rate) .....	\$1,140 per year.
Total Annualized Cost of the Proposed Rule (7% discount) .....	\$1,357 per year.
Benefits .....	Cost savings due to waiver of requirement that the marker have a light. Improved clarity and readability for existing information requirements.

**Discussion of Baseline Industry Behavior**

The Coast Guard proposes to revise its regulations requiring the owner of a wrecked vessel to mark the vessel with a light at night. Existing regulations require an owner of a vessel, raft, or other craft that is wrecked and sunk in a navigable channel to immediately mark it with a buoy or a beacon during the day and with a light at night, and maintain the markings until the wreck is removed.

The proposed revision would implement a provision in the Coast Guard and Maritime Transportation Act of 2004 that authorizes the Commandant of the Coast Guard, under certain circumstances, to waive the requirement to mark wrecked vessels with a light at night. The proposed change would permit a waiver to be granted if the District Commander determines the placement of a light would be impractical and granting a waiver will not create an undue hazard to navigation. The proposed rule also

makes certain edits in order to improve readability and clarify existing information requirements.

During the period from 2004 to 2011, the Coast Guard has received an annual average of 13 reports of sunken vessels that would be subject to the marking requirements in this rule.<sup>1</sup> Under the proposed rule, the owners or operators of these sunken vessels would be able to apply for a waiver of the requirement to mark the wreck with a light at night. If this proposed rule is finalized and the Coast Guard grants waivers to owners or operators who have already marked a wreck in accordance with the existing requirements, those owners or operators will have the option<sup>2</sup> to remove the

<sup>1</sup> The Coast Guard Office of Navigation Systems has provided information regarding these reports and has estimated an annual average of 13 vessels per year during this time.

<sup>2</sup> The term “option” is used, because vessel owners or operators that have not been granted a waiver approval at the time of the incident would have to deploy their buoy with a light. If the waiver is granted after the buoy has been deployed, the owner or operator of the buoy may elect not to maintain the lighting system, thereby causing it to

lights from the buoy or beacon marking the sunken vessels.

**Discussion of Costs**

Owners or operators of sunken vessels that voluntarily request a waiver would make the request to the District Commander of the District in which the vessel sunk. We anticipate that owners or operators requesting waivers would first initiate contact with the District Commander via voice communication (i.e., radio or cell phone) to report the location of the sinking along with the proposed information requirements in 33 CFR 64.11(c)(1) through (4) and request a waiver from the lighting requirements under 33 CFR 64.13. After this initial communication, vessel owners or operators formally submit to the District Commander, in writing, the information requirements under proposed § 64.11(c).<sup>3</sup> We note that while

become inoperable, which is equivalent to removing the light under this proposed rule.

<sup>3</sup> Specific procedures for submission of waiver requests are not prescribed in this proposed rule but

Continued

there are some changes to the wording of the information requirements in proposed § 64.11(c) (modifications from the existing text in § 64.11(b)), these changes are clarifying in nature and there is no change in the reporting requirements.

Records compiled by the Coast Guard Office of Navigation Systems, which are composed from data collected by the various Coast Guard Districts, show an annual average of 13 vessels that are sunk in navigable channels and marked under the current regulatory scheme. During the period of 2004 until 2011, a total of five requests for waivers were made to the Coast Guard and all had been approved. Although this would indicate less than one waiver request per year, the Coast Guard believes that an established process in the CFR would

cause additional requests for waivers. Many within the industry may not be aware that waivers can be requested. Therefore, by establishing a waiver regime in the CFR, we anticipate a wider audience would have knowledge about petitioning the USCG for a waiver. Based on responses from Coast Guard districts, the Coast Guard estimates that slightly less than 50 percent, or six vessel owners and operators, would request a waiver from the lighted buoy requirement per year.

As such, we estimate that six vessel owners and/or operators per year would request waivers from a District Commander. It is estimated that it would take an owner or operator approximately 15 minutes to report the incident to the Coast Guard, via voice communication, and informally request

a waiver for their marker. The loaded hourly wage rate of a Captain, Mate and Pilot of a Water Vessel (NAICS 53–5021) is \$48.30.<sup>4</sup> Therefore, the estimated cost of the initial reporting, per incident, is \$12.07 = (\$48.30 \* .25). We also estimate that it would take approximately 30 minutes, per waiver, to write up and submit a formal request to the District Commander. Therefore, the cost of submitting a request is \$24.15 = (\$48.30 \* .5), and the total cost for each occurrence is \$36.22 = (\$12.07 + \$24.15). Table 3 shows the total, 10-year cost of six affected vessels to be \$1,526 discounted at 7 percent and annualized cost of \$217.32 discounted at 7 percent.

The organizational and clarifying edits in the proposal would not result in additional costs to industry.

TABLE 3—TOTAL 10 YEAR COST TO INDUSTRY

Year	Undiscounted	7%	3%
1	217.32	\$203	\$211
2	217.32	190	205
3	217.32	177	199
4	217.32	166	193
5	217.32	155	187
6	217.32	145	182
7	217.32	135	177
8	217.32	126	172
9	217.32	118	167
10	217.32	110	162
Total	2,173.20	1,526.36	1,854
Annualized		217.32	217.32

Government Cost:

The District Commander could grant a waiver if the waiver would not create an undue hazard to navigation. We estimate that all waiver requests would be submitted in writing, including instances where oral waivers were requested at the time of the vessel sinking. For the purpose of this analysis, we assume that all waiver approvals (or

disapprovals) would be determined once written notice has been received by the District Commander.<sup>5</sup> We anticipate a Coast Guard Commander (O–5) will review the waiver requests and make the determination of whether to grant the waiver. As previously stated, it is projected that six waiver requests per year would be submitted for review. We estimate that each waiver

review would take approximately two hours.<sup>6</sup> Therefore, the government economic burden of reviewing a written waiver request is \$190 (\$95.00 at an O–5 wage rate<sup>7</sup> \* 2 hours) per waiver, and estimated annual burden of \$1,140 per year (\$190 per waiver \* 6 waivers). Table 4 shows total government 10-year cost at \$8,007, and annualized cost at \$1,140, both discounted at 7 percent.

TABLE 4—TOTAL GOVERNMENT COST

Year	Undiscounted	7%	3%
1	\$1,140	\$1,065.42	\$1,106.80
2	1,140	995.72	1,074.56
3	1,140	930.58	1,043.26
4	1,140	869.70	1,012.88
5	1,140	812.80	983.37
6	1,140	759.63	954.73

would be left to be decided by the individual District Commanders. However, we anticipate that any submission to the USCG would have cost associated with processing/reviewing a report. Therefore, this process would carry a cost which is estimated in the body of this regulatory assessment.

<sup>4</sup> [http://www.bls.gov/oes/2011/may/oes\\_nat.htm](http://www.bls.gov/oes/2011/may/oes_nat.htm), then scroll down and click 53–0000 “Transportation And Material Moving

Occupations”, then click 53–5021. Mean hourly wage for Captains, Mates and Pilots of Water Vessels. In addition, the cost reported in the analysis is based on the loaded wage rate, which is the reported BLS wage rate multiplied by the load rate of 1.4.

<sup>5</sup> We believe that it would take less time to approve the paper work for a waiver that was granted over the phone during the time of the vessel

sinking than for those vessels that were not granted a waiver at the time of sinking.

<sup>6</sup> We estimate that it would take Coast Guard personnel approximately 2 hours to review and grant a waiver.

<sup>7</sup> Wage rate for an O–5 comes from COMDTINST 7310.1M. Feb 2011.

TABLE 4—TOTAL GOVERNMENT COST—Continued

Year	Undiscounted	7%	3%
7 .....	1,140	709.93	926.92
8 .....	1,140	663.49	899.93
9 .....	1,140	620.08	873.72
10 .....	1,140	579.52	848.27
Total .....	11,400	8,006.88	9,724.43
Annualized .....	.....	1,140.00	1,140.00

Total 10-year (industry and government) cost of the proposed rule are estimated at \$13,573.20 (undiscounted) and \$9,533.25 discounted at 7 percent. The annualized cost of the rule is \$1,357.32 discounted at 7 percent. These figures assume that slightly less than half of the owners and operators of sunken vessels, wrecked and sunk in navigable channels, request a waiver. The total cost could be lower if more vessel owners choose not to request them.

#### Discussion of Benefits

The primary benefit of the proposed rule is that it provides a regulatory efficiency benefit. Currently, ship operators may not be aware that waivers from the lighting requirement may be requested. By establishing a waiver provision in the CFR, we anticipate a wider audience would have knowledge about petitioning the Coast Guard for a waiver. This would allow vessel owners or operators whose sunken vessels would not cause an undue navigational hazard if not marked with a light at night to be granted a waiver for the lighting requirement if the District Commander determines placing the light would be impractical. Under the current Coast Guard regulations, a lighting system must be installed on a sunken vessel's marker(s), whether the wreck is determined to pose a hazard to navigation or not. The granting of a waiver would remove the burden associated with the probable maintenance of a lighted marker such as a buoy,<sup>8</sup> without imposing additional safety risk.

Additionally, we believe that the clarifications to the regulations could improve the efficiency of data collection regarding vessel sinking by clarifying the information required (such as specifying that vessel type and size should be included in the description of a sunken vessel).

<sup>8</sup> Probable cost saving is difficult to determine. The amount of time a vessel remains sunken varies. Therefore, determining the amount of maintenance required on lighting hardware is unknown.

#### 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 fewer than 50,000 people.

The Coast Guard expects that this proposed rule could impact a maximum of six small entities per year at a cost of \$36 per waiver per entity, which we assume would have a cost impact of less than one percent of annual revenue per affected entity.

In addition, the proposed waiver provision is voluntary. There are no mandatory costs associated with this proposed rule. As previously discussed, some affected entities may incur cost savings for waivers from lighting requirements.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will 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 your business or organization qualifies, as well as how and to what degree this rule will 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 the rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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

As noted previously, we estimate that there would be fewer than 10 respondents affected in any given year. Therefore, this proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), since the estimated number of respondents is less than the threshold of 10 respondents per 12-month period for collection of information reporting purposes under the Paperwork Reduction Act.

#### 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. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism. This proposed rule would merely permit owners and operators of vessels sunk in navigable channels to request a waiver from the existing Coast Guard requirement to mark the wreck with a light at night.

It is well-settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well-settled that the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's

obligations, are within fields foreclosed from regulation by the States or local governments. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)). The Coast Guard believes the Federalism principles articulated in *Locke* apply to this proposed rule since it would only affect an area regulated exclusively by the Coast Guard.

#### 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 proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 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

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866, as supplemented by Executive Order 13563, 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.

#### 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 would 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 falls under section 2.B.2, figure 2–1, paragraph (34)(a), (b) and (i). This proposed rule involves regulations which are editorial,

regulations delegating authority, and regulations in aid of navigation such as vessel traffic services and marking of navigation systems. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 64 as follows:

#### PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

- 1. The authority citation for part 64 continues to read as follows:

**Authority:** 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

- 2. Revise § 64.11 to read as follows:

#### § 64.11 Marking, notification, and approval requirements.

(a) The owner and/or operator of a vessel, raft, or other craft wrecked and sunk in a navigable channel must mark it immediately with a buoy or beacon during the day and with a light at night. The requirement to mark the vessel, raft, or other craft with a light at night may be waived by the District Commander pursuant to § 64.13 of this subpart.

(b) The owner and/or operator of a sunken vessel, raft, or other craft that constitutes a hazard to navigation must mark it in accordance with this subchapter.

(c) The owner and/or operator of a sunken vessel, raft, or other craft must promptly report to the District Commander, in whose jurisdiction the vessel, raft, or other craft is located, the action they are taking to mark it. In addition to the information required by 46 CFR 4.05, the reported information must contain—

(1) Name and description of the sunken vessel, raft, or other craft, including type and size;

(2) Accurate description of the location of the sunken vessel, raft, or other craft, including how the position was determined;

(3) Water depth; and

(4) Location and type of marking established, including color and shape of buoy or other beacon and characteristic of the light, if fitted.

(d) The owner and/or operator of a vessel, raft, or other craft wrecked and sunk in waters subject to the jurisdiction of the United States or sunk

on the high seas, if the owner is subject to the jurisdiction of the United States, must promptly report to the District Commander, in whose jurisdiction the obstruction is located, the action they are taking to mark it in accordance with this subchapter. The reported information must contain the information listed in paragraph (c) of this section, including the information required by 46 CFR 4.05.

(e) Owners and/or operators of other obstructions may report the existence of such obstructions and mark them in the same manner as prescribed for sunken vessels.

(f) Owners and/or operators of marine pipelines that are determined to be hazards to navigation must report and mark the hazardous portion of those pipelines in accordance with 49 CFR parts 192 or 195, as applicable.

(g) All markings of sunken vessels, rafts, or crafts and other obstructions established in accordance with this section must be reported to and approved by the appropriate District Commander.

(h) Should the District Commander determine that these markings are inconsistent with part 62 of this subchapter, the markings must be replaced as soon as practicable with approved markings.

■ 3. Revise § 64.13 to read as follows:

**§ 64.13 Approval for waiver of markings.**

(a) Owners and/or operators of sunken vessels, rafts or other craft sunk in navigable waters may apply to the District Commander, in whose jurisdiction the vessel, raft, or other craft is located, for a waiver of the requirement to mark them with a light at night as required under § 64.11(a) of this subpart. Information on how to contact the District Commander is available at <http://www.uscg.mil/top/units>.

(b) The District Commander may grant a waiver if it is determined that—

(1) marking the wrecked vessel, raft or other craft with a light at night would be impractical, and

(2) the granting of such a waiver would not create an undue hazard to navigation.

Dated: May 21, 2013.

**Dana A. Goward,**

*Director, Maritime Transportation Systems,  
U.S. Coast Guard.*

[FR Doc. 2013-12545 Filed 5-24-13; 8:45 am]

**BILLING CODE 9110-04-P**

**GENERAL SERVICES  
ADMINISTRATION**

**48 CFR Parts 501, 538, and 552**

[GSAR Case 2012-G501; Docket 2013-0006; Sequence 1]

RIN 3090-AJ36

**General Services Administration  
Acquisition Regulation (GSAR);  
Electronic Contracting Initiative (ECI)**

**AGENCY:** Office of Acquisition Policy,  
General Services Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add a Modifications (Federal Supply Schedule) clause, and an Alternate I version of the clause that will require electronic submission of modifications under Federal Supply Schedule (FSS) contracts managed by GSA. The public reporting burdens associated with both the basic and Alternate I clauses are also being updated.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before July 29, 2013 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by GSAR Case 2012-G501, Electronic Contracting Initiative, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments by searching for "GSAR Case 2012-G501". Follow the instructions provided to "Submit a Comment". Please include your name, company name (if any), and "GSAR Case 2012-G501", on your attached document.

- *Fax:* 202-501-4067.
- *Mail:* U.S. General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, ATTN: Hada Flowers, Washington, DC 20405-0001.

*Instructions:* Please submit comments only and cite GSAR Case 2012-G501 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dana Munson, General Services Acquisition Policy Division, GSA, 202-357-9652 or email [Dana.Munson@gsa.gov](mailto:Dana.Munson@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact

the Regulatory Secretariat at 202-501-4755. Please cite GSAR Case 2012-G501.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

GSA is proposing to amend the GSAR to add a Modifications (Federal Supply Schedule) clause, and an Alternate I version of the clause that requires electronic submission of modifications for FSS contracts managed by GSA. This change is the result of modernized technology that will improve the process for submission of modifications under the Federal Supply Schedules Program, and was developed by GSA to satisfy customer demands.

The basic clause (previously at GSAR 552.243-72) was removed during the initial GSAR rewrite under proposed rule 2006-G507 published in the **Federal Register** at 74 FR 4596 on January 26, 2009. The initial GSAR rewrite proposed amendments to the GSAR to update text addressing GSAR Part 538. Withdrawal of GSAR case 2006-G507 was published in the **Federal Register** at 77 FR 76446 on December 28, 2012.

The basic clause is being reinstated at GSAR 552.238-81, Modifications (Federal Supply Schedule). The alternate version of the clause implements and mandates electronic submission of modifications, and only applies to FSS contracts managed by GSA. The alternate version of the clause links to GSA's electronic tool, eMod at <http://eoffer.gsa.gov/>. Use of eMod will streamline the modification submission process for both FSS contractors and contracting officers.

Use of eMod will establish automated controls in the modification process that will ensure contract documentation is completed and approved by all required parties. Additionally, eMod will foster GSA's Rapid Action Modification (RAM), which allows contracting officers to process certain modification requests to the FSS contract (e.g., administrative changes) as unilateral modifications with no requirement for contractor signature on the Standard Form 30, Amendment of Solicitation/Modification of Contract (SF30).

Current and new FSS contractors will be required to obtain a digital certificate in order to comply with submission of information via eMod. A digital certificate is an electronic credential that asserts the identity of an individual and enables eMod to verify the identity of the individual entering the system and signing documents. The certificate will be valid for a period of two years, after which, contractors must renew the

certificate at the associated cost during that time. At present, two FSS vendors are authorized to issue digital certificates that facilitate the use of eMod, at a price of \$119 per issuance and at renewals every two years. Having a digital certificate creates digital signatures which are verifiable. GSA has developed training on eMod, and obtaining a digital certificate. This information is posted on GSA's eOffer Web site at <http://eoffer.gsa.gov>.

The Department of Veterans Affairs (VA) does not have access to eMod, and is therefore not required to comply with the requirements of the Alternate I version of GSAR clause 552.238-81, Modifications (Federal Supply Schedule). VA will continue to utilize the basic version of the clause in management of their FSS contracts.

GSA is in the process of rewriting each part of the GSAR and GSAM, and as each GSAR part is rewritten, GSA will publish it in the **Federal Register** for comments. This rule covers the rewrite of GSAR Part 538, Electronic Contracting Initiative (Modifications).

On December 17, 2012, GSA published in the **Federal Register** at 77 FR 74631 a request for public comments on an information collection requirement for a new OMB clearance. One comment was received and is addressed in the Paperwork Reduction Act section of this notice.

## II. Executive Orders 12866 and 13563

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

## III. Regulatory Flexibility Act

The General Services Administration 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 the proposed rule will implement a streamlined, electronic process for submission and processing

of modification requests pertaining to FSS contracts managed by GSA. However, small businesses will be positively impacted by this initiative in that the process for submitting information is simplified, more structured and easy to use, and processing time is significantly reduced. For example, submission of a paper modification request is often a labor intensive process that involves repeated exchanges of information via standard mail and/or facsimile. The electronic process will include controls to prevent submission of incomplete requests that require follow-up.

Contractors will be able to offer the latest products and services to the Federal Government faster and more often due to this streamlined submission process.

Contractors will be required to obtain a digital certificate in order to comply with the eMod requirement. The cost of the digital certificate will impose some economic impact on all contractors, both small and other than small, doing business under Federal Supply Schedule contracts managed by GSA. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add clause 552.238-81, Modifications (Federal Supply Schedule) back into the GSAR, and an alternate version of the clause that requires electronic submission of modifications for Federal Supply Schedule (FSS) contracts managed by GSA via eMod. The addition of the basic clause is an administrative change that reinstates a previous clause inadvertently removed from the GSAR. The alternate clause has never received public comment.

The alternate version of this clause mandates electronic submission of modifications through GSA's electronic tool, eMod. Use of eMod establishes automated controls in the modification process that will ensure contract documentation is completed and approved by all required parties. Additionally, eMod will foster Rapid Action Modification (RAM), which allows contracting officers to process certain modifications (e.g., administrative changes) as unilateral modifications with no requirement for contractor signature on the Standard Form 30, Amendment of Solicitation/Modification of Contract (SF30). eMod will streamline the process and result in modification actions being processed more timely and efficiently.

In addition to adding automated controls into the modification process, mandating the electronic submission of modifications will support several Federal Acquisition Service (FAS) initiatives that are currently underway to enhance the MAS Program's ability to transition to a completely electronic

contracting environment. These initiatives include but are not limited to digitization of Multiple Award Schedule (MAS) contract files, Contracts Online, and the Enterprise Acquisition Solution (EAS).

eMod is consistent with the Electronic Signatures In Global and National Commerce Act (E-SIGN), enacted on June 20, 2000, and the Office of Management and Budget (OMB) Memoranda M-00-15, Guidance on Implementing the Electronic Signatures, dated September 25, 2000.

All of GSA's FSS contractors (19,000) will be required to obtain a digital certificate in order to comply with this requirement. Approximately 80 percent (15,200) GSA FSS contracts are held by small businesses. A digital certificate is an electronic credential that enables eMod to verify the identity of the individual entering the system and signing documents. The certificate will be valid for a period of two years, after which, contractors must renew the certificate. At present, two FSS vendors are authorized to issue digital certificates that facilitate the use of eMod, at a price of \$119 per issuance. The alternate version of this requirement does not apply to FSS contracts managed by the Department of Veteran Affairs (VA) because the VA does not utilize or have access to eMod.

The Regulatory Secretariat has submitted a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA 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. 601, *et seq.* (GSAR Case 2012-G501), in correspondence.

## IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat submitted a request for approval of a revised information collection requirement concerning (GSAR 2012-G501; Electronic Contracting Initiative) to the Office of Management and Budget.

The 1st notice of the information collection requirement was published in the **Federal Register** at 77 FR 74631 on December 17, 2012. The comment period closed on February 15, 2013. One comment was received. The commenter suggested that GSA increase the estimated burden hours per response to reflect the additional time required for

complex modification requests. The commenter also recommended that the number of estimated respondents per year be reduced, based on the logic that companies with zero sales under their contracts are not likely to submit modification requests.

GSA responded that the estimate of five burden hours per response already takes into consideration that modification requests can range from simple administrative changes to more complex changes involving the award of additional products and services. Additionally, the current estimate of 20,500 respondents per year is based on the total number of contracts awarded under the Federal Supply Schedule program, and is utilized consistent with other Federal Supply Schedule burden calculations for clauses and provisions applicable to all Federal Supply Schedule contracts. No change to the burden estimate was made as a result of the comment.

However, the notice indicated that 20,500 contractors would use the basic clause with an associated burden of 5 hours per response. This notice revises the collection to explain that 1,500 contractors (VA contractors) will use the basic clause with 5 hours of burden, and 19,000 contractors (GSA contractors) will use the alternate clause with 4 hours of burden. This will result in a total burden reduction for this collection of 57,000 burden hours.

A 2nd notice of the information collection requirement was published in the **Federal Register** at 78 FR 18285 on March 26, 2013. The comment period closed on April 25, 2013. No comments were received.

A. Public reporting burden for this collection of information is estimated to average 5 hours per response for manual modification requests and 4 hours per response for eMod requests, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

**552.238–81 Modifications (VA FSS Contractors Manual process)**

*Respondents:* 1,500.

*Responses per Respondent:* 3.

*Total Responses:* 4,500.

*Hours per Response:* 5.

*Total Burden Hours:* 22,500.

**552.238–81 Modifications Alternate I (GSA FSS Contractors eMod Electronic process)**

*Estimated Respondents/yr:* 19,000.

*Number of Submissions per*

*Respondent:* 3.

*Total Responses:* 57,000.

*Estimated Hours/Response:* 4.

*Total Burden Hours:* 228,000.

B. Request for Comments Regarding Paperwork Burden. Submit comments, including suggestions for reducing this burden, not later than July 29, 2013 to: U.S. General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417. Please cite OMB Control Number 3090–0302, Modifications (Multiple Award Schedules): GSAR Part Affected: 552.243–72, in all correspondence.

**List of Subjects in 48 CFR Parts 501, 538, and 552**

Government procurement.

Dated: May 22, 2013.

**Steven J. Kempf,**

*Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.*

Therefore, GSA proposes to amend 48 CFR parts 501, 538, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 538, and 552 continues to read as follows:

**Authority:** 40 U.S.C 121(c).

**PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM**

**501.106 [Amended]**

■ 2. Amend section 501.106 in the table, by adding in sequence, GSAR Reference “552.238–81” and its corresponding OMB Control Number “3090–0320”.

**PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING**

■ 3. Amend section 538.273 by adding paragraph (b)(3) to read as follows:

**538.273 Contract clauses.**

\* \* \* \* \*

(b) \* \* \*

(3) 552.238–81, Modifications (Federal Supply Schedule). Use alternate I for Federal Supply Schedules that only accept electronic modifications.

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 4. Add section 552.238–81 to read as follows:

**552.238–81 Modifications (Federal Supply Schedule).**

As prescribed in 538.273(b), insert the following clause:

**Modifications (Federal Supply Schedule) (DATE)**

(a) *General.* The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of Modifications.* (1) Additional items/additional SINs. When requesting additions, the following information must be submitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii) Discount information for the new items(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) as described in 552.212–70, Preparation of Offer (Multiple Award Schedule), is required.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with FAR 552.211–78, Commercial Delivery Schedule (Multiple Award Schedule).

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215–6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223–3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by FAR 52.212–3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with FAR 52.225–1, Buy American Act—Balance of Payments Programs—Supplies.

(2) *Deletions.* The Contractors shall provide an explanation for the deletion. The

Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) *Price Reduction.* The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238–75. If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) *Effective dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238–75.

(d) *Electronic File Updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238–75.

(e) *Amendments to Paper Federal Supply Schedule Price Lists.*

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February–April, and every three month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.

(End of Clause)

*Alternate I (Date).* As prescribed in 538.273(b)(3), add the following paragraph (f) to the basic clause:

(f) Electronic submission of modification requests is mandatory via eMod (<http://eOffer.gsa.gov>), unless otherwise stated in the electronic

submission standards and requirements at the Vendor Support Center Web site (<http://vsc.gsa.gov>). If the electronic submissions standards and requirements information is updated at the Vendor Support Center Web site, Contractors will be notified prior to the effective date of the change.

[FR Doc. 2013–12566 Filed 5–24–13; 8:45 am]

BILLING CODE 6820–61–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1333

[Docket No. EP 707]

#### Demurrage Liability

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Initial regulatory flexibility analysis and request for comments.

**SUMMARY:** The Board is publishing this initial regulatory flexibility analysis to aid the public in commenting on the impact on small rail carriers, if any, of the proposed rules on demurrage liability.

**DATES:** Comments are due by June 27, 2013.

**FOR FURTHER INFORMATION CONTACT:**

Amy C. Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** By decision served on May 7, 2012, the Surface Transportation Board (the Board) issued a notice of proposed rulemaking (NPR) regarding demurrage liability. Specifically, the Board announced a proposed rule providing that any person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond a specified period of time may be held liable for demurrage if that person has actual notice of the terms of the demurrage tariff providing for such liability prior to the carrier's placement of the rail cars. *Demurrage Liability*, EP 707, slip op. at 10 (STB served May 7, 2012). The NPR did not include an initial regulatory flexibility analysis (IRFA) pursuant to the Regulatory Flexibility Act, but instead included a certification that the proposed rules would not have a significant economic impact on a substantial number of small entities. *Id.*, slip op. at 17–18. The certification was based on the fact that rail carriers would be required to provide a one-time notice

(electronic or written) to their customers,<sup>1</sup> and the Board noted that these types of notices are generally already provided, often electronically. A review of the 2011 Waybill Sample reveals that small rail carriers, as defined by the Small Business Administration,<sup>2</sup> have an average of 10 terminating stations, which generally equates to 10 customers. As such, the burden imposed would be to provide approximately 10 notices of a carrier's demurrage tariff, either electronically or in writing, which is not significant. Additionally, to the extent that their existing tariffs conflict with the proposed rules, rail carriers would need to update their demurrage tariffs to conform to the proposed rules.

In response to the NPR, the American Short Line and Regional Railroad Association (ASLRRRA) submitted comments in which it questioned the necessity of imposing the actual notice requirement on small carriers. ALSRRA summarily argued that “small railroads . . . often communicate with shippers by telephone,” that Class III carriers are “sometimes less electronically sophisticated,” and that “small railroads, particularly those who are acting as handling lines, may not even know who the receiver is.”<sup>3</sup>

The Board continues to believe that its certification in the NPR is appropriate because the impact of the proposed rules would not be significant. Nevertheless, the Board has decided to publish the following analysis to provide further information and opportunity for public comment on the impact on small rail carriers, if any, of the rules. The Board notes that it already afforded a period of public comment on the proposed rules and that this solicitation of comments is limited to the impact on small rail carriers, if any, of the rules.

<sup>1</sup> The Paperwork Reduction Act and Regulatory Flexibility Act sections of the NPR assumed that rail carriers would only need to provide a one-time notice. *See, e.g.*, NPR at 21 (calculating burden hours by assuming that it would take “railroads eight hours to provide initial notice to its customers”). Many commenters asked for clarification on whether rail carriers would need to provide notice with each delivery of rail cars, or whether a one-time notice would suffice. In this IRFA, we are not deciding this issue, but only noting that the analyses contained in the NPR were based on the assumption that rail carriers would only need to provide a one-time notice.

<sup>2</sup> The Small Business Administration's Office of Size Standards has established a size standard for rail transportation, pursuant to which a “line-haul railroad” is considered small if its number of employees is 1,500 or less, and a “short line railroad” is considered small if its number of employees is 500 or less. 13 CFR 121.201 (industry subsector 482).

<sup>3</sup> ASLRRRA's Comments 3–4.

In particular, we encourage ASLRRRA to provide comments in response to this IRFA. Although we appreciate that ASLRRRA submitted comments regarding the impact on small carriers, its comments were general in nature. To fully evaluate ASLRRRA's comments, the Board seeks more specific information with which to evaluate the concerns raised by ASLRRRA. Specifically, we seek further comment on the number of small carriers that would find electronic or written communication of notice more difficult than communication of notice by phone, and why; and information on small carriers that deliver rail cars but are unaware of the receiver's identity. Additionally, we seek comment on the number of customers served by small carriers. We also encourage any other information that is relevant to the burden, if any, the proposed rules would have on small rail carriers.

*Description of the reasons that action by the agency is being considered.*

The Board instituted this proceeding in order to reexamine its existing policies on demurrage liability and to promote uniformity in the area in light of conflicting opinions from the United States Courts of Appeals. In reviewing the decisions from the Courts of Appeals, the Board determined that it was necessary to revisit its demurrage precedent to consider whether the agency's policies accounted for current statutory provisions and commercial practices. For a more detailed description of the agency's historical regulation of demurrage, the conflicting opinions from the Courts of Appeals, and the Board's reasons for considering the proposed rules, see the NPR.

*Succinct statement of the objectives of, and legal basis for, the proposed rule.*

The objectives are to update our policies regarding responsibility for demurrage liability and to promote uniformity in the area by defining who is subject to demurrage. The legal basis for the proposed rule is 49 U.S.C. 721.

*Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.*

In general, the rule would apply to any rail carrier providing rail cars to a shipper at origin or delivering them to a receiver at end-point or intermediate destination who wishes to charge demurrage for the detention of rail cars beyond the free time. See Proposed Rule

§ 1333.3. The rule will apply to approximately 562 small rail carriers.

*Description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

The proposed rules would require that rail carriers make certain third-party disclosures, i.e., provide persons receiving rail cars for loading or unloading with notice of the demurrage tariff in order to hold that person liable for demurrage charges. See Proposed Rule § 1333.3. The Board is seeking, pursuant to the Paperwork Reduction Act, approval from the Office of Management and Budget for this requirement. See NPR Appendix B (description of collections). To provide this initial notice, rail carriers would need to update their demurrage tariffs to conform to the proposed rules to the extent that their existing tariffs conflict with the proposed rules. In the NPR, the Board estimated approximately eight hours to provide initial notice to the railroads' customers. However, the Board seeks further comment on the actual time, or costs or expenditures, if any, of providing a one-time notice of the demurrage tariff and updating the demurrage tariff to conform to the proposed rules, and the extent to which these costs may differ or vary for small entities.

*Identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.*

The Board is unaware of any duplicative, overlapping, or conflicting federal rules. The Board seeks comments and information about any such rules.

*Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, including alternatives considered, such as: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of*

*performance rather than design standards; (4) any exemption from coverage of the rule, or any part thereof, for such small entities.*

Under the proposed rule, rail carriers would be free to choose between providing notice electronically or in writing. In response to the NPR, many commenters suggested that notice be fulfilled by providing a link to the notice, rather than the complete text of the notice of demurrage tariff. Additionally, as noted earlier, some commenters also argued that a one-time notice should fulfill the notice requirement, as opposed to providing notice with every shipment. Both of these suggestions are potential alternatives to minimize the burden on rail carriers.

Although the stated goal of the rulemaking is to "promote uniformity in the area," ASLRRRA has suggested establishing a different notice requirement for small carriers. An alternative to the proposed rule, as suggested by ASLRRRA, would be to eliminate the notice requirement for small carriers that publish their demurrage tariffs on the carriers' Web site. Other alternatives include eliminating the notice requirement for small carriers altogether or permitting small carriers to provide notice in different forms (e.g., by telephone). Commenters should, if they advance any of these alternatives in their comments, address how such alternatives would be consistent or inconsistent with the goal of uniformity envisioned by the proposed rules.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. Comments are due by June 27, 2013.
2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.
3. Notice of this decision will be published in the **Federal Register**.

Decided: May 21, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. 2013-12543 Filed 5-24-13; 8:45 am]

**BILLING CODE 4915-01-P**

# Notices

Federal Register

Vol. 78, No. 102

Tuesday, May 28, 2013

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 COMMERCE

### Bureau of Industry and Security

#### Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet June 11, 2013, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

#### Agenda

##### Public Session

1. Opening remarks by the Chairman.
2. Opening remarks by Bureau of Industry and Security.
3. Export Enforcement update.
4. Regulations update.
5. Working group reports.
6. Automated Export System (AES) update.
7. Presentation of papers or comments by the Public.

##### Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The open session will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at [Yvette.Springer@bis.doc.gov](mailto:Yvette.Springer@bis.doc.gov) no later than June 4, 2013.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to

the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 4, 2013, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482-2813.

Dated: May 22, 2013.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2013-12550 Filed 5-24-13; 8:45 am]

**BILLING CODE 3510-JT-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

##### Correction

In notice document 2013-7392 beginning on page 19197 in the issue of Friday, March 29, 2013, make the following correction:

On page 19198, in the table, in the first column, "A-351-825" should read "A-351-838".

[FR Doc. C1-2013-07392 Filed 5-24-13; 8:45 am]

**BILLING CODE 1505-01-D**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XC699**

#### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) will convene a conference call of its Ecosystem Advisory Subpanel (EAS). A listening station will be available at the Pacific Council offices for interested members of the public, and there may be opportunities to attend the meeting remotely.

**DATES:** The conference call will be held Friday, June 14, 2013, from 1 p.m. to 3 p.m.

**ADDRESSES:** The meeting will be held via conference call, with a public listening station available at the Pacific Council offices: 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Mike Burner, Staff Officer; telephone: (503) 820-2280.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the conference call is to discuss updating the federal list of authorized West Coast exclusive economic zone fisheries and other items related to the June 2013 Council meeting.

Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EAS's intent to take final action to address the emergency.

##### Special Accommodations

This listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, at (503) 820-2280, at least 5 days prior to the meeting date.

Dated: May 21, 2013.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013-12503 Filed 5-24-13; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Patent Term Extension

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before July 29, 2013.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Email:*

*InformationCollection@uspto.gov.*

Include "0651-0020 comment" in the subject line of the message.

- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-7728; or by email to [Raul.Tamayo@uspto.gov](mailto:Raul.Tamayo@uspto.gov). Additional information about this collection is also available at <http://www.reginfo.gov> under "Information Collection Review."

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The patent term restoration portion of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417), which is codified at 35 U.S.C. 156, permits the United States Patent and Trademark Office (USPTO) to extend the term of protection under a patent to compensate for delay during regulatory review and approval by the Food and Drug Administration (FDA) or

Department of Agriculture. Only patents for drug products, medical devices, food additives, or color additives are potentially eligible for extension. The maximum length that a patent may be extended under 35 U.S.C. 156 is five years.

Under 35 U.S.C. 156(d), an application for patent term extension must identify the approved product; the patent to be extended; and the claims included in the patent that cover the approved product, a method of using the approved product, or a method of manufacturing the approved product. 35 U.S.C. 156(d) also requires the application for patent term extension to provide a brief description of the activities undertaken by the applicant during the regulatory review period with respect to the approved product and the significant dates of these activities. Under 35 U.S.C. 156(e), an interim extension may be granted if the term of an eligible patent for which an application for patent term extension has been submitted would expire before a certificate of extension is issued.

The USPTO administers 35 U.S.C. 156 through 37 CFR 1.710-1.791. These rules provide for the public to, *inter alia*, submit 35 U.S.C. 156 patent term extension applications to the USPTO, request interim extensions and review of final eligibility decisions, and withdraw an application requesting a patent term extension after it is submitted.

Separate from the extension provisions of 35 U.S.C. 156, the USPTO may in some cases extend the term of an original patent due to certain delays in the prosecution of the patent application, including delays caused by interference proceedings, secrecy orders, or appellate review by the Patent Trial and Appeal Board or a Federal court in which the patent is issued pursuant to a decision reversing an adverse determination of patentability. The patent term provisions of 35 U.S.C. 154(b), as amended by Title IV, Subtitle D of the Intellectual Property and Communications Omnibus Reform Act of 1999, require the USPTO to notify the applicant of the patent term adjustment in the notice of allowance and give the applicant an opportunity to request reconsideration of the USPTO's patent term adjustment determination.

The USPTO may also reduce the amount of patent term adjustment granted if delays were caused by an applicant's failure to make a reasonable effort to respond within three months of the mailing date of a communication from the USPTO. Applicants may

petition for reinstatement of a reduction in patent term adjustment with a showing that, in spite of all due care, the applicant was unable to respond to a communication from the USPTO within the three-month period. The USPTO administers 35 U.S.C. 154 through 37 CFR 1.701-1.705.

The information in this collection is used by the USPTO to consider whether an applicant is eligible for a patent term extension or reconsideration of a patent term adjustment and, if so, to determine the length of the patent term extension or adjustment.

The USPTO is updating this information collection to remove one item, the Request for Recalculation of Patent Term Adjustment in View of *Wyeth* (PTO/SB/131), because the information is no longer being collected. The USPTO is also removing the fees associated with the information requirements in this collection because these fees have been moved into information collection 0651-0072, which was approved by OMB in January 2013 in conjunction with the USPTO rulemaking "Setting and Adjusting Patent Fees" (RIN 0651-AC54).

##### II. Method of Collection

By mail, facsimile, hand delivery, or electronically to the USPTO.

##### III. Data

*OMB Number:* 0651-0020.

*Form Number(s):* None.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Businesses or other for-profits; not-for-profit institutions.

*Estimated Number of Respondents:* 1,950 responses per year. The USPTO estimates that approximately 25% of these responses will be from small entities.

*Estimated Time per Response:* The USPTO estimates that it will take the public from 1 to 25 hours, depending on the complexity of the situation, to gather the necessary information, prepare the appropriate documents, and submit the information to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 7,252 hours.

*Estimated Total Annual Respondent Cost Burden:* \$2,690,492. The USPTO expects that the information in this collection will be prepared by attorneys at an estimated rate of \$371 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be approximately \$2,690,492 per year.

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Application to Extend Patent Term Under 35 U.S.C. 156 .....	25	60	1,500
Request for Interim Extension Under 35 U.S.C. 156(e)(2) .....	1	10	10
Petition to Review Final Eligibility Decision Under 37 CFR 1.750 .....	25	3	75
Initial Application for Interim Extension Under 35 U.S.C. 156(d)(5) .....	20	3	60
Subsequent Application for Interim Extension Under 37 CFR 1.790 .....	1	1	1
Response to Requirement to Elect .....	1	10	10
Response to Request to Identify Holder of Regulatory Approval .....	2	1	2
Declaration to Withdraw an Application to Extend Patent Term .....	2	1	2
Petition for Reconsideration of Patent Term Adjustment Determination .....	3	1,850	5,550
Petition for Reinstatement of Reduced Patent Term Adjustment .....	4	10	40
Petition to Accord a Filing Date to an Application Under 37 CFR 1.740 for Extension of a Patent Term .....	2	1	2
<b>Totals</b> .....		1,950	7,252

*Estimated Total Annual Non-hour Respondent Cost Burden:* \$90. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. However, this

collection does have annual (non-hour) costs in the form of postage costs. There are fees associated with the requirements for patent term extension and patent term adjustment. These fees

are covered under OMB control number 0651-0072. The fees are listed in the accompanying table for reference but will not be included in the annual (non-hour) cost burden for this collection.

Item	Fee amount
Application To Extend Patent Term Under 35 U.S.C. 156 .....	\$1,120.00.
Request for Interim Extension Under 35 U.S.C. 156(e)(2) .....	\$0.00.
Petition To Review Final Eligibility Decision Under 37 CFR 1.750 .....	\$0.00.
Initial Application for Interim Extension Under 35 U.S.C. 156(d)(5) .....	\$420.00.
Subsequent Application for Interim Extension Under 37 CFR 1.790 .....	\$220.00.
Response to Requirement To Elect .....	\$0.00.
Response to Request to Identify Holder of Regulatory Approval .....	\$0.00.
Declaration To Withdraw an Application to Extend Patent Term .....	\$0.00.
Petition for Reconsideration of Patent Term Adjustment Determination .....	\$200.00.
Petition for Reinstatement of Reduced Patent Term Adjustment .....	\$400.00.
Petition To Accord a Filing Date to an Application Under 37 CFR 1.740 for Extension of a Patent Term .....	(large entity) \$400.00. (small entity) \$200.00. (micro entity) \$100.00.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO expects that the Application to Extend Patent Term Under 35 U.S.C. 156, the Initial Application for Interim Extension Under 35 U.S.C. 156(d)(5), and approximately 7% of the other responses for this collection will be submitted by mail. The USPTO estimates that the average first-class postage cost for a mailed submission will be 46 cents and that up to 195 submissions will be mailed to the USPTO per year, for a total estimated postage cost of \$90 per year.

The total annual (non-hour) respondent cost burden for this collection is estimated to be approximately \$90 per year.

**IV. Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to: (a) 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; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: May 22, 2013.  
**Susan K. Fawcett,**  
*Records Officer, USPTO, Office of the Chief Information Officer.*  
 [FR Doc. 2013-12620 Filed 5-24-13; 8:45 am]  
**BILLING CODE 3510-16-P**

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

[Docket #: 130430427-3427-01; OMB Control #: 0625-0274 (Expiration: 04/30/2016)]

RIN 0625-XC006

**Interim Procedures for Considering Requests From the Public for Textile and Apparel Safeguard Actions on Imports From Panama**

**AGENCY:** The Committee for the Implementation of Textile Agreements.  
**ACTION:** Notice of interim procedures and request for comments.

**SUMMARY:** This notice sets forth the interim procedures the Committee for

the Implementation of Textile Agreements (“CITA”) will follow in implementing certain provisions of the United States-Panama Trade Promotion Agreement (“US-Panama TPA”). Title III, Subtitle B, Section 321 through Section 328 of the United States-Panama Trade Promotion Agreement Implementation Act (“Implementation Act”) [Pub. L. 112–43] authorizes the President to consider requests from the public for textile and apparel safeguard actions. The President has delegated to CITA the authority to determine whether imports of a Panamanian textile or apparel article are causing serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. CITA hereby gives notice to interested entities of the procedures CITA will follow in considering such requests and solicits public written comments on these interim procedures.

**DATES:** As of May 28, 2013, CITA intends to use these interim procedures to process requests from the public. CITA solicits public written comments on the interim procedures. Comments must be received no later than June 27, 2013 in either hard copy or electronically.

**ADDRESSES:** If submitting comments in hard copy, an original, signed document must be submitted to the Chairman, Committee for the Implementation of Textile Agreements, Room 30003, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. If submitting comments electronically, the electronic copy must be submitted to [OTEXA\\_PANAMA@trade.gov](mailto:OTEXA_PANAMA@trade.gov). All submitted comments will be posted for public review on the Web site dedicated to U.S.-Panama TPA textile and apparel safeguard proceedings. The Web site is located on the U.S. Department of Commerce’s Office of Textile and Apparel Web site (<http://otexa.ita.doc.gov>), under “Panama TPA”/“Safeguards.” Additional instructions regarding the submission of comments may be found at the end of this notice.

**FOR FURTHER INFORMATION CONTACT:** Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

**SUPPLEMENTARY INFORMATION:**

**Legal Authority:** Section 321 through Section 328 of the Implementation Act and Proclamation No. 8894, 77 FR 66507 (November 5, 2012).

**Background**

Title III, Subtitle B, Section 321 through Section 328 of the Implementation Act implements the textile and apparel safeguard provisions, provided for in Article 3.24 of the US-Panama TPA. The safeguard mechanism applies when, as a result of the elimination of a customs duty under the US-Panama TPA, a Panamanian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.24 permits the United States to increase duties on the imported article from Panama to a level that does not exceed the lesser of the prevailing U.S. most-favored-nation (MFN) duty rate for the article or the U.S. MFN duty rate in effect on the day the US-Panama TPA enters into force.

The import tariff relief is effective beginning on the date that CITA determines that a “Panamanian textile or apparel article,” as defined in Section 301(2) of the Implementation Act, is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article cause serious damage, or actual threat thereof, to a U.S. industry producing an article that is like, or directly competitive with, the imported article. Consistent with Section 323(a) of the Implementation Act, the maximum period of import tariff relief, as set forth in Section 3 of this notice, shall be three years. Consistent with Section 323(b) of the Implementation Act, if the initial period of import relief is applied for less than three years, CITA may extend it up to the three year maximum if CITA determines that the continuation is necessary to remedy or prevent serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition, and there is evidence that the domestic industry is, in fact, making a positive adjustment to import competition. Import tariff relief may not be applied to the same article at the same time under these procedures if relief previously has been granted with respect to that article under: (1) These procedures; (2) Subtitle A to Title III of the Implementation Act; or (3) Chapter 1 of Title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

Authority to provide import tariff relief with respect to a Panamanian

textile or apparel article will expire five years after the date on which the US-Panama TPA enters into force.

Under Article 3.24.6 of the US-Panama TPA, if the United States provides relief to a domestic industry under the textile and apparel safeguard, it must provide Panama “mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the textile safeguard measure.” Such concessions shall be limited to textile and apparel products, unless the United States and Panama agree otherwise. If the United States and Panama are unable to agree on trade liberalizing compensation, Panama may increase customs duties equivalently on U.S. products. The obligation to provide compensation terminates upon termination of the safeguard relief. Section 327 of the Implementation Act extends the President’s authority to provide compensation under Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, to measures taken pursuant to the US-Panama TPA’s textile and apparel safeguard provisions.

**Procedures for Requesting Textile and Apparel Safeguard Actions**

**1. Requirements for Requests.** Pursuant to Section 321(a) of the Implementation Act and Paragraph (7) of Presidential Proclamation 8894 of November 5, 2012, an interested party may file a request for a textile and apparel safeguard action with CITA. CITA will review requests from an interested party sent to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Ten copies of any such request must be provided. As provided in Section 328 of the Implementation Act, CITA will protect from disclosure any business confidential information that is marked “business confidential” to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided, that is identical to the business confidential version with the exception that any business confidential information is summarized or, if necessary, deleted. At the conclusion of the request, an interested party must attest that “all information contained in the request is complete and accurate and no false claims, statements, or representations have been made.” Consistent with Section 321(a), CITA will review a request initially to

determine whether to commence consideration of the request on its merits. Within 15 working days of receipt of a request, CITA will consider the criteria set forth below to determine whether the request provides the information necessary for CITA to consider the request. If the request does not provide the necessary information, CITA will promptly notify the requester of the reasons for this determination and the request will not be considered. However, CITA will reevaluate any request that is resubmitted with additional information.

Consistent with longstanding CITA practice in considering textile safeguard actions, CITA will consider an interested party to be an entity (which may be a trade association, firm, certified or recognized union, or group of workers) that is representative of either: (A) A domestic producer or producers of an article that is like, or directly competitive with, the subject Panamanian textile or apparel article; or (B) a domestic producer or producers of a component used in the production of an article that is like, or directly competitive with, the subject Panamanian textile or apparel article.

A request will only be considered if the request includes the specific information set forth below in support of a claim that a textile or apparel article from Panama is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a U.S. industry producing an article that is like, or directly competitive with, the imported article.

*A. Product description.* Name and description of the imported article concerned, including the category or categories or part thereof of the U.S. Textile and Apparel Category System (see "Textile Correlation" at <http://otexa.ita.doc.gov/corr.htm>) under which such article is classified, the Harmonized Tariff Schedule of the United States subheading(s) under which such article is classified, and the name and description of the like or directly competitive domestic article concerned.

*B. Import data.* The following data, in quantity by category unit (see "Textile Correlation"), on total imports of the subject article into the United States and imports from Panama into the United States:

\* Annual data for the most recent three full calendar years for which such data are available;

\* Quarterly data for the most recent year for which such data are partially

available, and quarterly data for the same quarter(s) of the previous year (e.g., January–March 2011, April–June 2011 and January–March 2010, April–June 2010).

The data should demonstrate that imports of a Panamanian-origin textile or apparel article that is like, or directly competitive with, the article produced by the domestic industry concerned are increasing in absolute terms or relative to the domestic market for that article.

*C. Production data.* The following data, in quantity by category unit (see "Textile Correlation"), on U.S. domestic production of the like or directly competitive article of U.S. origin indicating the nature and extent of the serious damage or actual threat thereof:

\* Annual data for the most recent three full calendar years for which such data are available;

\* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g., January–March 2011, April–June 2011 and January–March 2010, April–June 2010).

The requester must provide a complete listing of all sources from which the data were obtained and an affirmation that to the best of the requester's knowledge, the data represent substantially all of the domestic production of the like or directly competitive article(s) of U.S. origin. In such cases, data should be reported in the first unit of quantity in the Harmonized Tariff Schedule of the United States (<http://www.usitc.gov/tata/hts>) for the Panamanian textile and/or apparel articles and the like or directly competitive articles of U.S. origin.

*D. Market Share Data.* The following data, in quantity by category unit (see "Textile Correlation"), on imports from Panama as a percentage of the domestic market (defined as the sum of domestic production of the like or directly competitive article and total imports of the subject article); on total imports as a percentage of the domestic market; and on domestic production of like or directly competitive articles as a percentage of the domestic market:

\* Annual data for the most recent three full calendar years for which such data are available;

\* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g., January–March 2011, April–June 2011 and January–March 2010, April–June 2010).

*E. Additional data showing serious damage or actual threat thereof.* All

data available to the requester showing changes in productivity, utilization of capacity, inventories, exports, wages, employment, domestic prices, profits, and investment, and any other information, relating to the existence of serious damage, or actual threat thereof, caused by imports from Panama to the industry producing the like or directly competitive article that is the subject of the request. To the extent that such information is not available, the requester should provide best estimates and the basis therefore:

\* Annual data for the most recent three full calendar years for which such data are available;

\* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g., January–March 2011, April–June 2011 and January–March 2010, April–June 2010).

## 2. Consideration of Requests.

Consistent with Section 321(b) of the Implementation Act, if CITA determines that the request provides the information necessary for it to be considered, CITA will publish in the **Federal Register** a notice seeking public comments regarding the request, which will include a summary of the request and the date by which comments must be received. The **Federal Register** notice and the request, with the exception of information marked "business confidential," will be posted by the Department of Commerce's Office of Textiles and Apparel ("OTEXA") on the Internet (<http://otexa.ita.doc.gov>). The comment period shall be 30 calendar days. To the extent business confidential information is provided, a non-confidential version must also be provided, that is identical to the business confidential version with the exception that any business confidential information is summarized or, if necessary, deleted. At the conclusion of its submission of such public comments, an interested party must attest that "all information contained in the comments is complete and accurate and no false claims, statements, or representations have been made." Comments received, with the exception of information marked "business confidential," will also be on the Internet (<http://otexa.ita.doc.gov>) for review by the public. If a comment alleges that there is no serious damage or actual threat thereof, or that the subject imports are not the cause of the serious damage or actual threat thereof, CITA will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive

articles. In the case of requests submitted by entities that are not the actual producers of a like or directly competitive article, particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive article.

Any interested party may submit information to rebut, clarify, or correct public comments submitted by any other interested party at any time prior to the deadline provided in this section for submission of such public comments. If public comments are submitted less than 10 days before, or on, the applicable deadline for submission of such public comments, an interested party may submit information to rebut, clarify, or correct the public comments no later than 10 days after the applicable deadline for submission of public comments.

With respect to any request considered by CITA, CITA will make a determination within 60 calendar days of the close of the comment period. If CITA is unable to make a determination within 60 calendar days, it will publish a notice in the **Federal Register** and include the date by which it will make a determination. If CITA makes a negative determination, it will publish this determination and the reasons therefore in the **Federal Register**.

**3. Determination and Provision of Relief.** CITA shall determine whether, as a result of the reduction or elimination of a duty under the US-Panama TPA, Panama's textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. In making this determination, CITA: (1) Shall examine the effect of increased imports on the domestic industry as reflected in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and (2) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof. CITA, without delay, will provide written notice of its decision to the Government of Panama and will consult with said party upon its request.

If a determination under this section is affirmative, CITA may provide import tariff relief to a U.S. industry to the

extent necessary to remedy or prevent the serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition. Such relief may consist of an increase in duties to the lower of: (1) The Normal Trade Relations (NTR)/ Most Favored Nation (MFN) duty rate in place for the textile or apparel article at the time the relief is granted; or (2) the NTR/MFN duty rate for that article on the day the US-Panama TPA enters into force.

The import tariff relief is effective beginning on the date that CITA's affirmative determination is published in the **Federal Register**. The maximum period of import tariff relief shall be three years. However, if the initial period for import relief is less than three years, CITA may extend the period of import relief to the maximum three-year period if CITA determines that the continuation is necessary to remedy or prevent serious damage or actual threat thereof by the domestic industry to import competition, and that the domestic industry is, in fact, making a positive adjustment to import competition. Import tariff relief may not be imposed for an aggregate period greater than three years. Import tariff relief may not be applied to the same article at the same time under these procedures if relief previously has been granted with respect to that article under: (1) These procedures; (2) Subtitle A to Title III of the Implementation Act; or (3) Chapter 1 of Title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

Authority to provide import tariff relief for a textile or apparel article from Panama that is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article, will expire five years after the date on which the US-Panama TPA enters into force.

**4. Self Initiation.** CITA may, on its own initiative, consider whether imports of a textile or apparel article from Panama are being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In such considerations, CITA will follow procedures consistent with those set forth in Section 2 of this notice, including the publishing of a notice in the **Federal Register** seeking public

comment regarding the action it is considering.

**5. Record Keeping and Business Confidential Information.** The Office of Textiles and Apparel (OTEXA) will maintain an official record for each request on behalf of CITA. The official record will include all factual information, written argument, or other material developed by, presented to, or obtained by OTEXA regarding the request, as well as other material provided to the Department of Commerce by other government agencies for inclusion in the official record. The official record will include CITA memoranda pertaining to the request, memoranda of CITA meetings, meetings between OTEXA staff and the public, determinations, and notices published in the **Federal Register**. The official record will contain material which is public, business confidential, privileged, and classified, but will not include pre-decisional inter-agency or intra-agency communications. If CITA decides it is appropriate to consider materials submitted in an untimely manner, such materials will be maintained in the official record. Otherwise, such material will be returned to the submitter and will not be maintained as part of the official record. OTEXA will make the official record public except for business confidential information, privileged information, classified information, and other information the disclosure of which is prohibited by U.S. law.

The public record will be made available for public inspection at the Office of Textiles and Apparel, Room 30003, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m. on business days.

Information designated by the submitter as business confidential will normally be considered to be business confidential unless it is publicly available. CITA will protect from disclosure any business confidential information that is marked "business confidential" to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided, that is identical to the business confidential version with the exception that any business confidential information is summarized or, if necessary, deleted. CITA will make available to the public non-confidential versions of the request that is being considered, non-confidential versions of any public comments received with respect to a request, and, in the event

consultations are requested, the statement of the reasons and justifications for the determination subsequent to the delivery of the statement to Panama.

### Request for Comment on the Interim Procedures

Comments must be received no later than June 27, 2013, and in the following format:

- (1) Comments must be in English.
- (2) Comments must be submitted electronically or in hard copy, with original signatures.
- (3) Comments submitted electronically, via email, must be either in PDF or Word format, and sent to the following email address: [OTEXA\\_PANAMA@trade.gov](mailto:OTEXA_PANAMA@trade.gov). The email version of the comments must include an original electronic signature. Further, the comments must have a bolded heading stating "Public Version", and no business confidential information may be included. The email version of the comments will be posted for public review on the Panama TPA Safeguard Web site.
- (4) Comments submitted in hard copy must include original signatures and must be mailed to the Chairman, Committee for the Implementation of Textile Agreements, Room 30003, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. All comments submitted in hard copy will be made available for public inspection at the Office of Textiles and Apparel, Room 30003, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m. on business days. In addition, comments submitted in hard copy will also be posted for public review on the Panama TPA Safeguard Web site.

(5) Any business confidential information upon which an interested person wishes to rely may only be included in a hard copy version of the comments. Brackets must be placed around all business confidential information. Comments containing business confidential information must have a bolded heading stating "Confidential Version." Attachments considered business confidential information must have a heading stating "Business Confidential Information". The Committee will protect from disclosure any business confidential information that is marked "Business

Confidential Information" to the full extent permitted by law.

**Janet E. Heinzen,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 2013-12630 Filed 5-24-13; 8:45 am]

**BILLING CODE 3510-DS-P**

## COMMODITY FUTURES TRADING COMMISSION

**RIN 3038-AD96**

### Antidisruptive Practices Authority

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Interpretive guidance and policy statement.

**SUMMARY:** The Commodity Futures Trading Commission (the "Commission" or "CFTC") is issuing this interpretive guidance and policy statement ("interpretive statement") to provide guidance on section 747 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which prohibits certain disruptive trading, practices, or conduct as set forth in new section 4c(a)(5) of the Commodity Exchange Act (the "CEA"). This interpretive statement will provide market participants and the public with guidance on the scope and application of the statutory prohibitions set forth in CEA section 4c(a)(5).

**DATES:** This interpretive statement will become effective May 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** David Meister, Director, Division of Enforcement, [dmeister@cftc.gov](mailto:dmeister@cftc.gov), Vincent McGonagle, Senior Deputy Director, Division of Enforcement, [vmcgonagle@cftc.gov](mailto:vmcgonagle@cftc.gov) or Robert Pease, Counsel to the Director of Enforcement, 202-418-5863, [rpease@cftc.gov](mailto:rpease@cftc.gov); Three Lafayette Centre, 1151 21st Street NW., Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

#### Prohibition of Disruptive Practices

##### I. Statutory and Regulatory Authorities

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").<sup>1</sup> Title VII of the Dodd-Frank Act<sup>2</sup> amended the Commodity Exchange Act ("CEA")<sup>3</sup> to

<sup>1</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 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>2</sup> Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

<sup>3</sup> 7 U.S.C. 1 et seq.

establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by doing, among other things, the following: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 747 of the Dodd-Frank Act amends section 4c(a) of the CEA ("Prohibited Transactions") to add a new section entitled "Disruptive Practices." New CEA section 4c(a)(5) makes it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—(A) violates bids or offers; (B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or (C) is, is of the character of, or is commonly known to the trade as, "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution).

Dodd-Frank Act section 747 also amends section 4c(a) of the CEA by granting the Commission authority under new section 4c(a)(6) of the CEA to promulgate such "rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices" enumerated therein "and any other trading practice that is disruptive of fair and equitable trading."<sup>4</sup>

The Commission is issuing this interpretive guidance and policy statement ("interpretive statement") to provide market participants and the public with guidance on the manner in which it intends to apply the statutory prohibitions set forth in section 4c(a)(5) of the CEA. The public has the ability to present facts and circumstances that would inform the application of these policies.

<sup>4</sup> 7 U.S.C. 4(a)(6). At this time, the Commission is only providing interpretive guidance on the disruptive trading, practices, or conduct discussed herein. The Commission does not foreclose subsequent promulgation of rules and regulations pursuant to CEA section 4c(a)(6). The Commission also notes that new CEA section 4c(a)(5) is self-effectuating.

## II. Proposed Interpretive Order

On March 18, 2011, the Commission issued a proposed interpretive order (“Proposed Order”) providing proposed interpretive guidance on the three new statutory provisions of section 4c(a)(5) of the CEA.<sup>5</sup> In the Proposed Order, the Commission stated that CEA section 4c(a)(5) applied to trading, practices, or conduct on registered entities, including designated contract markets (“DCMs”) and swap execution facilities (“SEFs”).<sup>6</sup> The Proposed Order also provided that CEA section 4c(a)(5) would not apply to block trades, bilaterally negotiated swap transactions, or exchanges for related positions (“EFRPs”) transacted in accordance with the rules of a DCM or SEF.<sup>7</sup>

With respect to CEA section 4c(a)(5)(A)’s prohibition on violating bids and offers, the Proposed Order stated that a person is prohibited from buying a contract at a price that is higher than the lowest available offer price and/or from selling a contract at a price that is lower than the highest available bid price.<sup>8</sup> Such conduct, regardless of intent, disrupts the foundation of fair and equitable trading. The Commission further proposed that CEA section 4c(a)(5)(A) was a *per se* offense where the Commission would not be required to show that a person violating bids or offers did so with any intent to disrupt fair and equitable trading.<sup>9</sup>

In the Proposed Order, the Commission also stated that CEA section 4c(a)(5)(A) is applicable in any trading environment where a person exercises some control over the selection of bids and offers against which they transact, including when using an automated trading system that operates without pre-determined matching algorithms.<sup>10</sup> The Commission further explained that CEA section 4c(a)(5)(A) does not apply where a person is unable to violate a bid or offer—i.e., when a person is using an order matching algorithm.<sup>11</sup> The

Commission also proposed that CEA section 4c(a)(5)(A) would not apply where an individual is executing a sequence of trades to buy all available bids or sell to all available offers on an order book in accordance with the rules of the facility on which the trades were executed.<sup>12</sup>

In regard to CEA section 4c(a)(5)(B), the provision for orderly execution during the closing period, the Commission interpreted the provisions as requiring that a market participant must at least act recklessly to violate CEA section 4c(a)(5)(B).<sup>13</sup> The Proposed Order stated that accidental, or even negligent trading, is not a sufficient basis for the Commission to claim a violation has occurred under CEA section 4c(a)(5)(B). The Proposed Order also generally defined the closing period as the period in the contract or trade when the settlement price is determined under the rules of that registered entity.<sup>14</sup>

The Proposed Order also explained that while CEA section 4c(a)(5)(B) encompasses any trading, practices, or conduct inside the closing period that affects the orderly execution of transactions during the closing period, disruptive conduct outside the closing period may also form the basis for investigations of potential CEA section 4c(a)(5)(B) violations.<sup>15</sup> Section 4c(a)(5)(B) violations may also include executed orders, as well as bids and offers submitted by market participants for the purpose of disrupting fair and equitable trading.<sup>16</sup>

When determining whether a person violated CEA section 4c(a)(5)(B), the Commission proposed to evaluate the facts and circumstances as of the time the person engaged in the trading, practices, or conduct.<sup>17</sup> The Commission proposed to use existing concepts of orderliness when assessing whether trades were executed, or orders were submitted, in an orderly fashion in the time periods prior to and during the closing period.<sup>18</sup> The Proposed Order also expressed that market participants should assess market conditions and consider how their trading practices and conduct would affect the orderly execution of transactions during the closing period.<sup>19</sup>

With respect to CEA section 4c(a)(5)(C), the Proposed Order stated

that a market participant must act with some degree of intent to violate the “spoofing” provision.<sup>20</sup> Reckless trading, practices, or conduct would not violate CEA section 4c(a)(5)(C); instead, a person must intend to cancel a bid or offer before execution.<sup>21</sup> Additionally, orders, modifications, or cancellations would not be considered “spoofing” if they were submitted as part of a legitimate, good-faith attempt to consummate a trade.<sup>22</sup> While the Proposed Order did not exempt partial fills from CEA section 4c(a)(5)(C), legitimate, good-faith cancellations of partially filled orders would not violate CEA section 4c(a)(5)(C).<sup>23</sup> Similar to the Commission’s proposed approach to CEA section 4c(a)(5)(B), the Commission proposed to evaluate the facts and circumstances when distinguishing between legitimate trading and “spoofing” behavior.<sup>24</sup>

Under the Proposed Order, CEA section 4c(a)(5)(C) covers bid and offer activity on all registered entities, including all bids and offers in pre-open periods or during exchange-controlled trading halts. The Proposed Order also provided three non-exclusive examples of “spoofing” behavior.<sup>25</sup> The Commission further proposed that CEA section 4c(a)(5)(C) does not cover non-executable market communications such as requests for quotes and other authorized pre-trade communications.<sup>26</sup> Finally, the Commission proposed that a violation of CEA section 4c(a)(5)(C) does not require a pattern of activity, even a single instance of trading activity can be disruptive of fair and equitable trading.<sup>27</sup>

The Commission requested comment on all aspects of the Proposed Order, with the comment period ending on May 17, 2011. In response to the Proposed Order, the Commission received 16 comments from industry members, trade associations, exchanges, and other members of the public.<sup>28</sup> In

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> The Proposed Order described “spoofing” to include the following: (i) Submitting or cancelling bids or offers to overload the quotation system of a registered entity, (ii) submitting or cancelling bids or offers to delay another person’s execution of trades, and (iii) submitting or cancelling multiple bids or offers to create an appearance of false market depth. 76 FR at 14946.

<sup>26</sup> 76 FR at 14946.

<sup>27</sup> *Id.*

<sup>28</sup> Appendix 3 contains the list of commenters that responded to the Proposed Order. The comment letters may be accessed through <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=893>.

<sup>5</sup> 76 FR 14943 (Mar. 18, 2011). On November 2, 2010, the Commission issued an Advance Notice of Proposed Rulemaking (the “ANPR”) asking for public comment on section 747 of the Dodd-Frank Act. 75 FR 67301 (Nov. 2, 2010). The ANPR formed the basis for a roundtable held on December 2, 2010, by Commission staff in Washington, DC. The Commission subsequently terminated the ANPR on March 18, 2011. 76 FR 14826 (Mar. 18, 2011).

<sup>6</sup> 76 FR at 14945. The Commission also stated that a trade does not become subject to CEA section 4c(a)(5) because it is reported to a swap data repository, even though such swap data repository is a registered entity.

<sup>7</sup> *Id.* at 14946.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

drafting this interpretive statement, the Commission also considered the ANPR and December 2, 2010 roundtable comments, as well as comments related to section 747 of the Dodd-Frank Act that were filed in response to the SEF notice of proposed rulemaking (the “SEF NPRM”).<sup>29</sup>

### III. Comments on the Proposed Order

#### A. General Applicability of CEA Section 4c(a)(5)

##### 1. Comments

In response to the Proposed Order, several commenters requested additional guidance and suggested that additional clarity was needed regarding how the Commission would interpret and apply new CEA section 4c(a)(5).<sup>30</sup> Some commenters supported the statutory requirement in new CEA section 4c(a)(5) to prohibit the enumerated trading practices and prevent the disruption of fair and equitable trading.<sup>31</sup> Other commenters noted that the Commission should recognize the complementary role of the exchanges and continue relying on the exchanges’ self-regulatory organization (“SRO”) authority to identify and pursue trading practices that are manipulative or detrimental to the exchange’s markets.<sup>32</sup> Commenters also requested that CEA section 4c(a)(5) violations be limited to those trading platforms on DCMs or SEFs that have order book functionality.<sup>33</sup> Lastly, some

<sup>29</sup> 76 FR 1214 (Jan. 7, 2011).

<sup>30</sup> See, e.g., FIA at 2 (“The Proposed Order does not go far enough in offering guidance to market participants.”); ICE at 2 (“Additional clarity is required with respect to the Commission’s interpretation and guidance regarding paragraphs (A) through (C) of Section 747.”).

<sup>31</sup> See, e.g., ISDA at 2 (“ISDA supports the Commission’s effort to facilitate fair and equitable trading on registered entities by issuing guidance as to the parameters of the three statutory disruptive practices found in Subsection 5.”); ICE at 2 (“ICE continues to support the Commission’s efforts to promote open and competitive markets while improving the ability to deter improper trading practices that are disruptive to legitimate trading and orderly markets.”); Barnard at 2 (“I welcome and support your proposed interpretive order. It brings clarity to the antidisruptive practices authority, and strikes the right balance between rules- and principles-based regulation.”).

<sup>32</sup> See, e.g., ICE at 5 (“ICE respectfully suggests that the Commission continue to rely on exchange SRO authority to identify and pursue trading practices that are determined to be manipulative or detrimental to the exchange’s markets, including practices that are the character of spoofing.”); FIA at 7 (“The Associations believe that any rulemaking under 747 must reinforce the distinct yet complementary roles of the Commission and the exchanges.”); and CMC at 2 (“SROs and the Commission historically have served distinct but largely complementary roles.”).

<sup>33</sup> See, e.g., ISDA at 2 (“Subsection 5, though stated to apply to all “registered entities”—that is . . . swap execution facilities (“SEFs”) and

commenters requested that the Commission incorporate a manipulative intent requirement into its new antidisruptive practices authority to ensure that the prohibitions in CEA section 4c(a)(5) do not capture legitimate trading practices that may be indistinguishable from the proposed prohibited conduct.<sup>34</sup>

##### 2. Commission Guidance

The Commission recognizes commenters’ requests for additional guidance on CEA section 4c(a)(5) and is issuing this interpretive statement to clarify how the Commission interprets and intends to apply the three statutory provisions of CEA section 4c(a)(5). With respect to the role of exchanges in ensuring fair and equitable markets, the Commission agrees with commenters that exchanges serve an important role in preventing the disruptive practices prohibited in CEA section 4c(a)(5) and ensuring fair and equitable trading in CFTC-regulated markets.

The Commission declines the request by commenters to interpret CEA section 4c(a)(5) as applying to only those trading platforms or venues that have order book functionality. In accordance with the statutory language of CEA section 4c(a)(5), the Commission interprets CEA section 4c(a)(5) to apply to *any* trading, practices or conduct on a registered entity<sup>35</sup> such as a DCM or SEF.<sup>36</sup> Depending on the particular facts and circumstances, CEA section 4c(a)(5) violations may also occur on trading platforms or venues that are distinct from order books, even if such platforms or venues may have similar functionality.

The Commission also declines commenters’ requests to read a

designated contract markets (“DCMs”)—should be clearly limited at the outset only to those order-book trading facilities within the Commission’s proposed regulation, 17 CFR 37.9(a)(1)(i)(C), for the definition of “order book.”

<sup>34</sup> See, e.g., FIA at 5 (“Unfortunately, the antidisruptive practices authority captures many legitimate trading practices which, without a manipulative intent requirement, are objectively indistinguishable from the proposed prohibited conduct.”).

<sup>35</sup> Section 1a(40) of the CEA defines “registered entity” as “(A) a board of trade designated as a contract market under section 5; (B) a derivatives clearing organization registered under section 5b; (C) a board of trade designated as a contract market under section 5f; (D) a swap execution facility registered under section 5h; (E) a swap data repository registered under section 21; and (F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.” 7 U.S.C. 1a(40).

<sup>36</sup> The Commission confirms that a trade does not become subject to CEA section 4c(a)(5) solely because it is reported on a swap data repository, even though a swap data repository is a registered entity.

manipulative intent requirement into the CEA section 4c(a)(5) prohibitions. The Commission interprets the prohibitions in CEA section 4c(a)(5) provisions to be distinct statutory provisions from the anti-manipulation provisions in section 753 of the Dodd-Frank Act; the Commission does not interpret the CEA section 4c(a)(5) violations as including any manipulative intent requirement. Including such a manipulative intent requirement is contrary to the statutory language.

The Commission does not intend to apply CEA section 4c(a)(5) to either block trades or exchanges for related positions (“EFRPs”) that are transacted in accordance with Commission regulation 1.38.

In addition to these general comments on CEA section 4c(a)(5), commenters provided comments on the three new statutory provisions, which are discussed in the following sections.

#### B. Violating Bids and Offers

##### 1. Comments to the Proposed Interpretive Order

Commenters requested that the Commission modify its interpretation that a CEA section 4c(a)(5)(A) violation is a *per se* offense and incorporate a requirement that a person must intend to disrupt fair and equitable trading.<sup>37</sup> Commenters noted that the Commission’s interpretation that the violation of bids or offers is a *per se* offense conflicts with exchange rules.<sup>38</sup> Other commenters requested that the Commission adopt either a “specific” intent or “extreme recklessness” standard for CEA section 4c(a)(5)(A).<sup>39</sup> Commenters to the Proposed Order also requested guidance on how CEA section 4c(a)(5)(A) would apply to the trading of swaps on SEFs.<sup>40</sup> In particular, commenters stated that end-users should have discretion when choosing a

<sup>37</sup> See, e.g., Working Group at 3 (“The Working Group strongly recommends that the Commission interpret new CEA Section 4c(a)(5)(A) as requiring an intent to disrupt the market.”).

<sup>38</sup> See, e.g., CME at 4 (“Contrary to the Commission’s assertion, this broad construction is *not* consistent with exchange rules, which only proscribe market participants’ intentional violation of bids and offers.”).

<sup>39</sup> See, e.g., CMC at 3 (“The Commission should clarify that only intentional or extremely reckless action to violate transparent bids or offers contravenes this prohibition.”).

<sup>40</sup> See, e.g., FIA at 4 (“The Associations recommend that the Commission provide further clarification. One example is the application to swap execution facilities (“SEFs”); BF at 14 (“We further recommend that the CFTC confirm that transactions executed other than on a SEF’s central order book will not be deemed to “violate bids or offers” for purposes of CEA Section 4c(a)(5)(A), regardless of their price level.”)

counterparty and also requested clarification on whether market participants may consider additional non-price factors when trading on a SEF.<sup>41</sup> Commenters also requested guidance on whether CEA section 4c(a)(5)(A)'s prohibition applies to bids and offers on non-cleared swaps.<sup>42</sup> Commenters also stated that swaps with different clearing destinations should not be deemed comparable for the purposes of CEA section 4c(a)(5)(A).<sup>43</sup>

Commenters further asked whether CEA section 4c(a)(5)(A) requires market participants to transact at the best price across a particular SEF's different trading systems or platforms, such as the SEF's order book and request-for-quote system. Commenters also asked for clarification on how CEA section 4c(a)(5)(A) applies to request-for-quote systems on SEFs and whether request-for-quotes ("RFQs") must interact with the SEF's order book or centralized electronic screen.<sup>44</sup> One commenter stated that the Proposed Order would effectively impose a "trade through" requirement on market participants executing swap transactions across a particular SEF's trading systems or platforms.<sup>45</sup> Commenters further requested that the Commission confirm that the final order would not create a best execution requirement across multiple SEFs.<sup>46</sup>

A commenter also agreed with the statement in the Proposed Order that

<sup>41</sup> See, e.g., Coalition at 4 ("An interpretation that precludes end-users from exercising discretion in its counterparty selection could force end-users to make sub-optimal decisions when determining the most suitable swap counterparty on a given transaction.").

<sup>42</sup> See, e.g., MarketAxess at 3 ("The final order should make clear that the CFTC's interpretation of new CEA § 4c(a)(5)(A) does not apply to uncleared swaps.").

<sup>43</sup> See, e.g., Consolidated Banks at 14 ("Nor should swaps with different bilateral counterparties or clearing destinations be deemed comparable to each other for such purposes.").

<sup>44</sup> See, e.g., MarketAxess at 3 ("We ask that the Commission confirm in its final Interpretive Order that a person would not violate bids or offers by buying or selling a contract on a SEF's Request for Quote System when that contract is available to buy or sell at a 'better' price through another permitted execution method offered by that SEF such as an Order Book or a centralized electronic screen.").

<sup>45</sup> See, e.g., GFI at 2 ("GFI believes that the Proposed Interpretation would effectively impose a trade-through rule on SEFs that utilize trading methods that are not strictly automated, and that such a requirement is neither required by the Dodd-Frank Act nor furthers the purposes of the CEA.").

<sup>46</sup> See, e.g., Working Group at 3 ("The Working Group supports the Commission's statement 'section 4c(a)(5)(A) does not create any sort of best execution standard across multiple trading platforms and markets; rather, a person's obligation to not violate bids or offers is confined to the specific trading venue which he or she is utilizing at a particular time' and strongly recommends that such interpretation of new CEA Section 4c(a)(5)(A) be adopted in any final interpretive order.").

CEA section 4c(a)(5)(A) should not apply where an individual is "buying the board" and executing a sequence of trades to buy all available bids or sell to all available offers on the order book in accordance with the rules of the facility executing the trades.<sup>47</sup>

## 2. Commission Guidance

The Commission declines requests to interpret CEA section 4c(a)(5)(A) as applying only where a person intends to disrupt fair and equitable trading. The Commission interprets CEA section 4c(a)(5)(A) as a *per se* offense. Congress did not include an intent requirement in CEA section 4c(a)(5)(A) as it did in both CEA sections 4c(a)(5)(B) and 4c(a)(5)(C). Therefore, the Commission does not interpret CEA section 4c(a)(5)(A) as requiring the Commission to show that a person acted with *scienter* in violating bids and offers (e.g., that a person acted with either the intent to disrupt fair and equitable trading or with the intent to violate bids and offers). Unlike certain exchange rules that prohibit the intentional violation of bids and offers, the statutory language of CEA section 4c(a)(5)(A) does not contain a similar intent requirement.<sup>48</sup> While the Commission's determination of whether to bring an enforcement action depends on facts and circumstances, the Commission does not, for example, intend to exercise its discretion to bring an enforcement action against an individual who, purely by accident, makes a one-off trade in violation of CEA section 4c(a)(5)(A). Whether such an accidental violation gives rise to some other violation of the CEA or Commission regulations depends, again, on the facts and circumstances of the particular situation.

As a general matter, the Commission interprets CEA section 4c(a)(5)(A) as operating in any trading environment where a person is not utilizing trading algorithms that automatically match the best price for bids and offers. With respect to SEFs, the Commission interprets CEA section 4c(a)(5)(A) as being applicable only when a person is using a SEF's "order book," and not when a person uses a SEF's other execution methods (such as the RFQ system in conjunction with the order book). The Commission recognizes that market participants may consider a number of factors in addition to price when trading or executing less liquid swaps, which are more likely to be

traded on a SEF's RFQ system or a different execution method. However, as SEFs and the swaps markets evolve, the Commission may revisit these issues in the future. The Commission agrees with commenters that parties trading non-cleared swaps may take into consideration factors other than price, such as counterparty risk, when determining how to best execute their trades.<sup>49</sup> Therefore, the Commission interprets CEA section 4c(a)(5)(A) as not applying to non-cleared swap transactions, even if they are transacted on or through a registered entity. In such swap transactions, the credit considerations of the counterparties are important components of choosing which bid or offer to accept.

The Commission also agrees with commenters that parties may take into account clearing considerations, such as the use of a particular clearing house, when trading cleared swaps on certain platforms on a SEF or on a DCM.<sup>50</sup> The Commission interprets CEA section 4c(a)(5)(A)'s prohibition as not applying to bids or offers on swaps that would be cleared at different clearing houses because each clearing house may have different cost, risk, and material clearing features.<sup>51</sup> For example, the choice of a clearing house may affect a party's net and gross outstanding exposures, which may result in differing capital and cost of financing effects. Additionally, the pricing of swaps may also incorporate other potential considerations such as the available credit capacity at the clearing member or clearing house, margining arrangements, or post-trade market risk.

Therefore, the Commission interprets CEA section 4(c)(a)(5)(A) as prohibiting a person from buying a contract on a registered entity at a price that is higher than the lowest available price offered for such contract or selling a contract on a registered entity at a price that is lower than the highest available price bid for such contract subject to the situations described above. Such

<sup>49</sup> See, e.g., Coalition at 3 ("To understand the impact of applying section 4c(a)(5)(A) to non-cleared transactions executed off-facility, we have to understand how corporate treasurers have a fiduciary duty to optimize numerous factors—not solely the transaction price of a particular derivative—in achieving 'best execution'").

<sup>50</sup> As stated previously, the Commission interprets new CEA section 4c(a)(5)(A) as applying to any cleared swap traded on a SEF's order book, regardless of whether such cleared swap is subject to the mandatory trade execution requirement of new CEA section 2(h).

<sup>51</sup> See, e.g., GFI at 2 ("Because market participants that execute transactions on a SEF may clear their transactions at different clearinghouses, they must have the flexibility to take factors other than price into account when executing transactions on a SEF.").

<sup>47</sup> See CME at 3 ("We also concur with the Commission's determination that this section does not apply where an individual is 'buying the board.'").

<sup>48</sup> See, e.g., New York Mercantile Exchange Rule 514.A.3; Minneapolis Grain Exchange Rule 731.00.

conduct, regardless of intent, disrupts fair and equitable trading by damaging the price discovery function of CFTC-regulated markets. By adopting a policy that market participants cannot execute trades at prices that do not accurately reflect the best price for such contracts, this interpretive statement furthers the CEA's purpose of ensuring the integrity of the price discovery process by helping ensure that the prices disseminated to market users and the public reflect bona fide prices that accurately reflect the normal forces of supply and demand.

The Commission further recognizes that at any particular time the best price in one trading environment such as a particular SEF may differ from the best price in a different trading environment such as a second, distinct SEF. Accordingly, the Commission does not interpret CEA section 4c(a)(5)(A) as creating any sort of best execution standard across multiple registered entities, including SEFs or DCMs; rather, the Commission interprets a person's obligation to not violate bids or offers as applying only to the specific registered entity being utilized at a particular time.<sup>52</sup>

The Commission does not interpret CEA section 4c(a)(5)(A) as applying where an individual is executing a sequence of trades to buy all available offers or sell to all available bids on an order book in accordance with the rules of the facility on which the trades were executed. Similar to the treatment of block trades and EFRPs described above, the Commission expects that "buying the board" transactions, absent other facts and circumstances, would not violate CEA section 4c(a)(5) or disrupt fair and equitable trading.

<sup>52</sup> A person's obligation to not violate bids or offers is confined to the particular SEF or DCM he is utilizing at a particular time and does not extend across multiple SEFs or DCMs or between different trading systems or platforms within a particular SEF or DCM, such as between a pit and any electronic trading platform within a DCM or a SEF's "order book" and RFQ system in conjunction with the order book. However, as the swaps and SEF markets evolve, the Commission may revisit these issues in other Commission regulations. For example, the Commission may consider whether a person's obligation to not violate bids or offers when trading swaps should extend across multiple SEFs or DCMs or across a particular SEF's different trading systems or platforms, including whether the CEA section 4c(a)(5)(A) prohibition should apply to the scenario where market participants can access multiple SEFs through one trading platform.

### *C. Disregard for the Orderly Execution of Transactions During the Closing Period*

#### 1. Comments to the Proposed Interpretive Order

Commenters supported the Commission's proposed guidance that accidental or negligent conduct does not constitute a violation of new CEA section 4c(a)(5)(B).<sup>53</sup> With respect to the *scienter* required for a CEA section 4c(a)(5)(B) violation, commenters requested that the Commission require, at a minimum, a *scienter* of "extreme recklessness."<sup>54</sup> Commenters also stated that manipulative intent should be required to violate CEA section 4(c)(a)(5)(B) and that these prohibitions should be limited to manipulative conduct such as "banging" or "marking the close."<sup>55</sup>

Commenters requested that the Commission provide additional clarity regarding the meaning of the term "closing period" as used in CEA section 4c(a)(5)(B).<sup>56</sup> Commenters expressed the view that, unlike futures, certain swaps, such as physical products that are priced using indices, do not have defined closing periods.<sup>57</sup> Some commenters disagreed with the Commission's view that the prohibition on disorderly execution of transactions should extend to conduct occurring outside the closing period.<sup>58</sup>

<sup>53</sup> See, e.g., CME at 4 ("We commend the Commission for clarifying that, consistent with the plain language of Section 747, accidental or negligent conduct does not constitute a violation of subsection (B).").

<sup>54</sup> See *id.* ("We believe that the Commission should provide in its final order that a violation of subsection (B) requires a showing of scienter—that is, that the person acted knowingly, intentionally, or with extreme recklessness to commit the prohibited conduct.").

<sup>55</sup> See, e.g., FIA at 5 ("The Commission should clarify that traditionally accepted types of market manipulation, such as 'banging the close,' 'marking the close' and pricing window manipulation fall under Section 4c(a)(5)(B). . . . Additionally, the Commission should clarify that manipulative intent is required to violate Section 4c(a)(5)(B)").

<sup>56</sup> See, e.g., BGA at 3 ("BGA is concerned that the Commission has not provided sufficient clarity around the terms 'orderly execution,' 'disruptive conduct,' or 'closing period.'"); CME at 5 ("We understand that the Commission cannot precisely define the parameters of 'orderly execution' and whether certain executions during the closing period are 'orderly' must necessarily be inferred from the totality of the facts and circumstances. Indeed, we noted in our comment letter in response to the ANPR that 'orderly execution' can be evaluated only in the context of the specific instrument, market conditions, and participant circumstances at the time in question.").

<sup>57</sup> See *id.* ("It appears that the Commission is changing the definition of 'closing period' relating to physical products that are pricing using indices or benchmarks. These products do not have defined closing periods; therefore, it is inappropriate to apply a 'closing period' concept to them.").

<sup>58</sup> See, e.g., CME at 6 ("It is unclear how trading practices or conduct outside of the 'closing period'

Commenters also requested that the Commission further clarify the term "orderly execution" as set forth in section CEA section 4c(a)(5)(B).<sup>59</sup> Commenters stated that the Commission should not engage in *post hoc* evaluations as to what types of trading, conduct, or practices violate CEA section 4c(a)(5)(B).<sup>60</sup> Commenters also claimed that having the Commission rely on concepts of orderliness as developed in securities law precedent was problematic because of the significant differences between the securities and CFTC-regulated markets.<sup>61</sup> Commenters further stated that requiring market participants to assess market conditions before trading conflicts with the Commission's assertion that CEA section 4c(a)(5)(B) will not capture legitimate trading behavior.<sup>62</sup> Commenters also noted that in today's highly automated trading environments, it is impractical for market participants to assess market conditions prior to the entry of each order.<sup>63</sup>

would demonstrate intentional or reckless disregard for the orderly execution of transactions during the closing period.").

<sup>59</sup> See, e.g., BGA at 3 ("BGA is concerned that the Commission has not provided sufficient clarity around the terms 'orderly execution,' 'disruptive conduct,' or 'closing period.'"); CME at 5 ("We understand that the Commission cannot precisely define the parameters of 'orderly execution' and whether certain executions during the closing period are 'orderly' must necessarily be inferred from the totality of the facts and circumstances. Indeed, we noted in our comment letter in response to the ANPR that 'orderly execution' can be evaluated only in the context of the specific instrument, market conditions, and participant circumstances at the time in question.").

<sup>60</sup> See, e.g., MFA at 4 ("The definition of the term 'orderly' is not only vague, but also subjective and would allow for post hoc judgments as to what constitutes violative, disruptive conduct."); FIA at 5 ("Market participants should not fear that their trading activity may be the subject of a post hoc analysis which labels a trade or a series of trades 'disruptive.'").

<sup>61</sup> See, e.g., CME at 6–7 ("In light of these and other significant differences that exist in their respective market and regulatory structures, as well as the fundamental purposes of the markets, we caution the Commission against importing securities-based concepts to the derivatives markets.").

<sup>62</sup> See *id.* (Requiring participants to assess market conditions and consider how their trading may affect orderly execution during the closing period is "at odds with the Commission's assertion that this section 'will not capture legitimate trading behavior and is not a trade for those who act in good faith.'").

<sup>63</sup> See, e.g., CME at 4 ("Given today's highly automated environment and the millisecond speed with which liquidity can be sourced, consumed and withdrawn, it is impractical to require such analysis prior to the entry of each order, much less presume that market participants can always accurately assess market conditions or divine market impact, particularly during the closing period which is often the most volatile period of the day and a period in which certainty of execution may be a more material consideration than price.").

## 2. Commission Guidance

The Commission interprets Congress's inclusion of a *scienter* requirement in CEA section 4c(a)(5)(B) as meaning that accidental, or even negligent, trading, practices, or conduct will not be a sufficient basis for the Commission to claim a violation under CEA section 4c(a)(5)(B). The Commission interprets CEA section 4c(a)(5)(B) as requiring a market participant to at least act recklessly to violate CEA section 4c(a)(5)(B).<sup>64</sup> The Commission declines to interpret CEA section 4c(a)(5)(B) to include either an extreme recklessness standard or a manipulative intent requirement because this modification would alter the *scienter* standard mandated by the statute, which prohibits conduct that demonstrates "intentional or reckless disregard for the orderly execution of transactions during the closing period."<sup>65</sup> Recklessness is a well-established *scienter* standard, which has consistently been defined as conduct that "departs so far from the standards of ordinary care that it is very difficult to believe the actor was not aware of what he or she was doing."<sup>66</sup> Consistent with long-standing precedent under commodities and securities law, the Commission intends to apply this commonly-known definition of recklessness to CEA section 4c(a)(5)(B). A person with manipulative intent, such as one attempting to "bang" or "mark the close" may also intend to disrupt

the orderly execution of transactions during the closing period, but the finding of a manipulative intent is not a prerequisite for a finding of a violation of CEA section 4c(a)(5)(B).

The Commission interprets the prohibition in CEA section 4c(a)(5)(B) to apply to any trading, conduct, or practices occurring within the closing period that demonstrates an intentional or reckless disregard for the orderly execution of transactions during the closing period. The Commission interprets the closing period to be defined generally as the period in the contract or trade when the settlement price is determined under the rules of a trading facility such as a DCM or SEF. Closing periods may include the time period in which a daily settlement price is determined, the expiration day for a futures contract, and any period of time in which the cash-market transaction prices for a physical commodity are used in establishing a settlement price for a futures contract, option, or swap (as defined by the CEA). With respect to swaps, the Commission interprets a swap as being subject to the provisions of section 4c(a)(5)(B) if a DCM or SEF determines that a settlement or pricing period exists for that particular swap.<sup>67</sup> Additionally, the Commission's policy is that conduct outside the closing period may also disrupt the orderly execution of transactions during the closing period and may thus form the basis of a violation under CEA section 4c(a)(5)(B) and any other applicable CEA sections. For example, a CEA section 4c(a)(5)(B) violation may occur when a market participant accumulates a large position in a product or contract in the period immediately preceding the closing period with the intent (or reckless disregard) to disrupt the orderly execution of transactions during that product's, or a similar product's, defined closing period.

The Commission interprets CEA section 4c(a)(5)(B) violations as including not only executed orders by market participants that disrupt the orderly execution of transactions during the closing period, but also any bids and offers submitted by market participants that disrupt the orderly execution of transactions during the closing period. For example, bids and offers submitted by a person, even if they are not

executed against by other market participants, may disrupt orderly trading in the closing period by sending false signals to the marketplace that consequently affect the trading behavior of market participants in the closing period. As such, bids and offers submitted by a person who intends to cancel the bid or offer before execution may have violations of both CEA section 4c(a)(5)(B), a disruption of orderly trading in the closing period, and CEA section 4c(a)(5)(C), "spoofing."

Similar to other *scienter*-based violations of the CEA, the Commission intends to consider all of the relevant facts and circumstances when determining whether a person violated CEA section 4c(a)(5)(B). The Commission recognizes that an evaluation of "orderly execution" should be based on the totality of the facts and circumstances as of the time the person engaged in the relevant trading, practices, or conduct—i.e., the Commission intends to consider what the person knew or should have known, and the information available at the time he or she was engaging in the conduct at issue. For example, a CEA section 4c(a)(5)(B) violation would not occur simply because a person's execution of orders during the closing period had a substantial effect on a contract's settlement price; rather, such person's conduct must also demonstrate an intentional or reckless disregard for the orderly execution of transactions during the closing period.

While the Commission recognizes there are differences between securities markets and CFTC-regulated markets, fundamental concepts of how an orderly market should function are similar in both markets. In light of the differences between these two markets, the Commission will be guided, but not controlled, by the substantial body of judicial precedent applying the concepts of orderly markets established by the courts with respect to the securities markets. To this end, the Commission's policy is that an orderly market may be characterized by, among other things, parameters such as a rational relationship between consecutive prices, a strong correlation between price changes and the volume of trades, levels of volatility that do not dramatically reduce liquidity, accurate relationships between the price of a derivative and the underlying such as a physical commodity or financial instrument, and reasonable spreads between contracts for near months and

<sup>64</sup> See, e.g., *Hammond v. Smith Barney, Harris Upham & Company, Inc.*, [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 (CFTC Mar. 1, 1990) (*scienter* requires proof that a defendant committed the alleged wrongful acts "intentionally or with reckless disregard for his duties under the Act"); *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (DC Cir. 1988) (holding that recklessness is sufficient to satisfy *scienter* requirement and that a reckless act is one where there is so little care that it is "difficult to believe the [actor] was not aware of what he was doing") (quoting *First Commodity Corp. v. CFTC*, 676 F.2d 1, 7 (1st Cir. 1982)).

<sup>65</sup> 7 U.S.C. 4c(a)(5)(B).

<sup>66</sup> *Drexel Burnham Lambert Inc.* at 748; see also *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977), *cert. denied*, 434 U.S. 875 (1977) (holding that recklessness under SEC Rule 10b–5 means "an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it") (internal quotation marks and citation omitted); *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1093–94 (9th Cir. 2010) ("scienter [under SEC Rule 10b–5] requires either deliberate recklessness or conscious recklessness, and [ ] it includes a subjective inquiry turning on the defendant's actual state of mind") (internal quotation marks and citations omitted). See also, the final rules issued by the Commission on July 14, 2011 (Prohibition on the Employment, or Attempted Employment, of Manipulation and Deceptive Devices and Prohibition on Price Manipulation), 76 FR, July 14, 2011.

<sup>67</sup> The Commission disagrees with commenters that physical products priced using indices or benchmarks do not have defined closing periods. For physical products priced using indices, price reporting agencies may use the transaction prices during a certain window of time to calculate price indexes. Market participants have the same ability to disrupt trading during these windows of time as they do during the closing periods as defined by the DCM or SEF.

for remote months.<sup>68</sup> For example, trading in a manner that intentionally or recklessly causes the price relationships between the price of a derivative and the underlying commodity to diverge, or cause spreads between contracts for near months and for remote months to diverge could constitute a violation of the statute.

Finally, the Commission recommends that market participants should assess market conditions and consider how their trading practices and conduct affect the orderly execution of transactions during the closing period. Market participants should assess market conditions before placing a bid or offer, or executing an order, because this will help prevent market participants from engaging in trading, practices, or conduct that disrupts fair and equitable trading in CFTC-regulated markets.

#### D. "Spoofing"

##### 1. Comments to the Proposed Interpretive Order

Commenters requested additional Commission guidance on the definition of "spoofing" as set forth in CEA section 4c(a)(5)(C).<sup>69</sup> Commenters stated that any violations should not capture legitimate trading behavior. For example, to differentiate "spoofing" from legitimate trading behavior, commenters state that any person violating CEA section 4c(a)(5)(C) must also intend to mislead market participants and to exploit that deception for the spoofing entity's benefit.<sup>70</sup> Commenters further requested that if a bid or offer has the risk of being hit or lifted by the market, for any period of time, such trading activity should be exempt from being classified as a "spoofing" violation.<sup>71</sup> Commenters

<sup>68</sup> While the role of market specialists is unique to the securities markets as of this time, the economic concepts applicable to orderly markets in securities markets may help guide the Commission when analyzing orderly trading in CFTC-regulated markets.

<sup>69</sup> See, e.g., ICE at 4 ("The Commission should provide additional guidance as to what specific types of improper trading practices or activity would be broadly characterized as being spoofing and 'of the character of' spoofing.').

<sup>70</sup> See, e.g., CMC at 4 ("The distinguishing characteristic between 'spoofing' that should be covered by Section 747(C) and the legitimate cancellation of other unfilled or partially filled orders is that 'spoofing' involves the intent to enter non bona fide orders for the purpose of misleading market participants and exploiting that deception for the spoofing entity's benefit.').

<sup>71</sup> See, e.g., BGA at 4 ("BGA recommends the Commission clarify that, if a bid or offer has the risk of being hit or lifted by the market, for any period

expressed a similar view that partial fills should also be exempt from the definition of "spoofing."<sup>72</sup> Lastly, one commenter stated CEA section 4c(a)(5)(C) violations should only be applicable to order-book facilities.<sup>73</sup>

##### 2. Commission Guidance

The Commission interprets a CEA section 4c(a)(5)(C) violation as requiring a market participant to act with some degree of intent, or *scienter*, beyond recklessness to engage in the "spoofing" trading practices prohibited by CEA section 4c(a)(5)(C). Because CEA section 4c(a)(5)(C) requires that a person intend to cancel a bid or offer before execution, the Commission does not interpret reckless trading, practices, or conduct as constituting a "spoofing" violation.<sup>74</sup> Additionally, the Commission interprets that a spoofing violation will not occur when the person's intent when cancelling a bid or offer before execution was to cancel such bid or offer as part of a legitimate, good-faith attempt to consummate a trade. Thus, the Commission interprets the statute to mean that a legitimate, good-faith cancellation or modification of orders (e.g., partially filled orders or properly placed stop-loss orders) would not violate section CEA 4c(a)(5)(C). However, the Commission does not interpret a partial fill as automatically exempt from being classified as "spoofing" and violating CEA section 4c(a)(5)(C).

When distinguishing between legitimate trading (such as trading involving partial executions) and "spoofing," the Commission intends to evaluate the market context, the person's pattern of trading activity (including fill characteristics), and other relevant facts and circumstances. For example, if a person's intent when placing a bid or offer was to cancel the entire bid or offer prior to execution and not attempt to consummate a legitimate

of time, this activity be deemed legitimate conduct and not be deemed 'spoofing.'").

<sup>72</sup> See, e.g., FIA at 6 ("Traders engage in legitimate trading practices that are unintentionally captured by Section 747's definition of 'spoofing.' For example, traders may enter larger than necessary orders to ensure their hedging or delivery needs are met and, once met, they may then cancel part of the original order.').

<sup>73</sup> See, e.g., ISDA at 4 ("The entire Proposed Guidance discussion of spoofing is in exchange terminology and facially applicable only in an exchange environment. Again, we believe this is, if applicable at all, applicable at this time only to Order-Book facilities.').

<sup>74</sup> Similar to violations under CEA section 4c(a)(5)(B), the Commission does not interpret CEA section 4c(a)(5)(C) as reaching accidental or negligent trading, practices, or conduct.

trade, regardless of whether such bid or offer was subsequently partially filled, that conduct may violate CEA section 4c(a)(5)(C).

The Commission interprets and intends to apply CEA section 4c(a)(5)(C) as covering bid and offer activity on all products traded on all registered entities, including DCMs and SEFs. The Commission further interprets CEA section 4c(a)(5)(C) to include all bids and offers in pre-open periods or during other exchange-controlled trading halts. As noted earlier, the Commission does not interpret CEA section 4c(a)(5)(C) as restricting "spoofing" violations to trading platforms and venues only having order book functionality. "Spoofing" may possibly occur on any trading platform or venue where a market participant has the ability to either (a) send executable bids and offers to market participants or (b) transact against resting orders.

The Commission provides four non-exclusive examples of possible situations for when market participants are engaged in "spoofing" behavior,<sup>75</sup> including: (i) Submitting or cancelling bids or offers to overload the quotation system of a registered entity, (ii) submitting or cancelling bids or offers to delay another person's execution of trades, (iii) submitting or cancelling multiple bids or offers to create an appearance of false market depth, and (iv) submitting or canceling bids or offers with intent to create artificial price movements upwards or downwards. The Commission also does not intend to apply the "spoofing" provision as covering market communications such as authorized pre-trade communications.

As with other intent-based violations, the Commission intends to distinguish between legitimate trading and "spoofing" by evaluating all of the facts and circumstances of each particular case, including a person's trading practices and patterns. The Commission does not interpret a CEA section 4c(a)(5)(C) violation as requiring a pattern of activity; the Commission interprets CEA section 4c(a)(5)(C) such that even a single instance of trading activity can violate CEA section 4c(a)(5)(C), provided that the activity is conducted with the prohibited intent.

Issued in Washington, DC, on May 20, 2013, by the Commission.

**Christopher J. Kirkpatrick,**  
*Deputy Secretary of the Commission.*

<sup>75</sup> See 76 FR at 14947.

**Appendices to Antidruptive Practices Authority—Commission Voting Summary; Statements of Commissioners; and List of Roundtable Participants and Commenters**

**Appendix 1—Commission Voting Summary**

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia, and Wetjen voted in the affirmative. No Commissioners voted in the negative.

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

I support the Interpretive Guidance and Policy Statement regarding disruptive practices on swap execution facilities and designated contract markets. As part of market reform, Congress expressly prohibited certain trading practices that were deemed disruptive of fair and equitable trading on CFTC-registered entities, such as swap execution facilities and designated contract markets.

These provisions are important because it is a core mission of the CFTC to protect the markets against abusive and disruptive practices, particularly those that impede critical price discovery functions.

The Interpretive Guidance and Policy Statement provides additional guidance to market participants regarding the scope of conduct and trading practices that would violate the law. For instance, the Commission interprets this provision, section 747 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, to apply to any trading, practices or conduct on registered SEFs or DCMs.

The guidance addresses the comments the Commission received in response to the proposal, including a roundtable.

**Appendix 3—Parties Submitting Comment Letters in Response To Disruptive Trading Practices Proposed Interpretive Order**

Banking Firms Consolidated (“BF”)  
 Better Markets (“BM”)  
 BG Americas & Global LNG (“BGA”)  
 Chris Barnard  
 Coalition for Derivatives End Users (“Coalition”)  
 CME Group (“CME”)  
 Commodity Markets Council (“CMC”)  
 Futures Industry Association/Securities Industry and Financial Markets Association (“FIA”)  
 GFI Group, Inc. (“GFI”)  
 Hampton Technology Resources (“HTR”)  
 InterContinentalExchange (“ICE”)  
 International Swaps and Derivatives Association (“ISDA”)  
 Managed Funds Association (“MFA”)  
 MarketAxess  
 Minneapolis Grain Exchange (“MGE”)  
 Working Group of Commercial Energy Firms (“Working Group”)

[FR Doc. 2013–12365 Filed 5–24–13; 8:45 am]

**BILLING CODE 6351-01-P**

**CONSUMER PRODUCT SAFETY COMMISSION**

[Docket No. CPSC–2011–0074]

**Agency Information Collection Activities; Proposed Collection; Comment Request; CPSC Table Saw User Survey**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Consumer Product Safety Commission (CPSC or Commission) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey of table saw users to determine the effectiveness of modular blade guards.

**DATES:** Submit written or electronic comments on the collection of information by July 29, 2013.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2011–0074, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through [www.regulations.gov](http://www.regulations.gov). The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Written Submissions:* Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such

information should be submitted in writing.

*Docket:* For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, and insert the docket number, CPSC–2011–0074, into the “Search” box, and follow the prompts. A copy of the draft survey is available at <http://www.regulations.gov> under Docket No. CPSC–2011–0074, Supporting and Related Materials.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Squibb, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: [rsquibb@cpsc.gov](mailto:rsquibb@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. Accordingly, the CPSC is publishing notice of the proposed collection of information set forth in this document.

**A. Table Saw User Survey**

The CPSC is considering whether a new performance safety standard is needed to address an unreasonable risk of injury associated with table saws. On October 11, 2011, the Commission published an advance notice of proposed rulemaking (ANPR) for table saws, under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2084. (76 FR 62678). The ANPR explained that under the current voluntary standard, UL 987, Stationary and Fixed Electric Tools, published in November 2007, a new modular blade guard design, developed by a joint venture of the leading table saw manufacturers, expanded the table saw guarding requirements. The new blade guard did not consist of a hood, but rather, a top-barrier guarding element and two side-barrier guarding elements. The new modular guard design was intended to be an improvement over traditional hood guard designs, by providing better visibility, by being easier to remove and install, and by

incorporating a permanent riving knife design. The revised standard also specified detailed design and performance requirements for the modular blade guard, riving knife, and anti-kickback device(s). The effective date for the new requirements in UL 987 was January 31, 2010.

In the ANPR, the Commission expressed concern that the requirements in the voluntary standard for table saws, UL 987, which include a permanent riving knife and the new modular blade guard system, may not adequately address the operator blade contact injuries associated with table saw use. The Commission stated that:

While we support the recent progress UL has made in improving the voluntary standard to address blade contact injuries by focusing solely on prevention of skin-to-blade contact, the standard requirements do not appear to address adequately the number or severity of blade contact injuries that occur on table saws, nor do they address the associated societal costs. In addition, while we believe that the new modular guard design is a significant improvement over the old guard design, the effectiveness of any blade guard system depends upon an operator's willingness to use it. Safety equipment that hinders the ability to operate the product likely will result in consumers bypassing, avoiding, or discarding the safety equipment. In addition, of the 66,900 table saw operator blade contact injuries in 2007 and 2008, approximately 20,700 (30.9%) of the injuries occurred on table saws where the blade guard was in use. The current voluntary standard for table saws does not appear to address those types of injuries. Accordingly, we are particularly interested in obtaining information regarding current or developing voluntary standards that would address table saw blade contact injuries.

76 FR 62683. Currently, the CPSC does not know how consumers are using the new modular blade guard. Because the usage patterns are directly linked to the safety of the user, additional data are needed to understand how consumers use the modular blade guard to determine how effective the design will be in preventing future injuries. The data collected from this survey will be used to help CPSC staff understand better how consumers are using the modular blade guard system, such as when consumers install and remove the blade guard, what type of cuts are being made without the blade guard, and/or what may be preventing the use of the blade guard. With additional information, the Commission will be able to evaluate the role of modular blade guards in the proposed rule. The data, along with testing results, subject matter input analysis, and other study information, will be used by the Commission to develop the proposed

rule addressing consumer injuries associated with table saws.

To gather the information, the CPSC will conduct a survey of consumers who own table saws with a modular blade guard system. Because the population of owners of table saws that were purchased with a modular blade guard is a specific and hard-to-reach population, the survey will be based on a convenience sample of participants recruited by various advertisement strategies. No results from the survey will be generalized to the population. To recruit respondents, advertisements will be placed on popular Web sites, in woodworking magazines, and posted in woodworking guilds with their cooperation. Respondents will have the option to go through a screening process, either online, or via the telephone. Respondents meeting the criteria of the survey—owners of table saws with the modular blade guard system—will participate in the follow-up, full-scale Computer Assisted Telephone Interviewing (CATI) survey about their usage of, and opinions about, the modular blade guard system. After completion of the full-scale CATI survey, each respondent will be sent a \$50 check for completing the survey. CPSC staff anticipates that approximately 100 eligible respondents will be interviewed. Up to an additional 100 respondents may be interviewed, if additional funding becomes available.

A final report will summarize the data about modular blade use collected from the surveyed table saw owners. Any patterns that emerge can be considered in conjunction with other testing, subject matter expert analyses, and any other data gathered as part of the rulemaking process, to assess the potential effectiveness of the modular blade guard design and to inform rulemaking. Any patterns that emerge may also be used by CPSC staff to develop future studies.

#### B. Burden Hours

CPSC staff estimates that the recruitment stage time required to verify whether the respondent fits the study's target group of consumers will not exceed 10 minutes, and the actual survey will not exceed 25 minutes. Thus, total time per eligible respondent is estimated not to exceed 35 minutes. For the 100 anticipated eligible respondents, time required in connection with the survey would be estimated at approximately 58 hours (100 × 0.58 hours) in the aggregate. According to the Bureau of Labor Statistics, March 2013, <http://www.bls.gov/news.release/ecec.nr0.htm>, the average compensational hourly rate

is \$28.89. The total cost burden for this study is estimated at \$1,676. If an additional 100 respondents were interviewed, the total burden hours would be estimated at \$3,352.

The estimated cost to the federal government is \$182,159.87 for the costs of recruiting respondents and conducting the survey. In addition, one full-time CPSC employee will spend an estimated 600 hours of labor for an estimated cost of \$49,488, the equivalent of a GS-14 Step 5 employee with an additional 30.8 percent added for benefits for an hourly compensation rate of \$82.48. (U.S. Bureau of Labor Statistics, "Employer Costs for Employee Compensation," December 2012, Table 1, percentage of wages and salaries for all civilian management, professional, and related employees, <http://www.bls.gov/ncs>). Accordingly, the total estimated cost to the federal government is \$231,647.87 (\$182,159.87 plus \$49,488). If an additional 100 respondents are surveyed, the additional estimated cost to the federal government is \$98,000 (\$31,000 for recruiting + \$67,000 for conducting survey), for a total estimated cost to the federal government of \$329,647.87.

#### C. Request for Comments

The CPSC invites comments on these topics:

- Whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility;
- The accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
  - Ways to enhance the quality, utility, and clarity of the information to be collected; and
  - Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Dated: May 22, 2013.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2013-12552 Filed 5-24-13; 8:45 am]

BILLING CODE 6355-01-P

## CONSUMER PRODUCT SAFETY COMMISSION

### Notice of Second Prehearing Conference; Update

**AGENCY:** U.S. Consumer Product Safety Commission.

In the Matter of Baby Matters, LLC,  
CPSC Docket No. 13–1.

**Federal Register** Citation of  
Previous Announcement:

Vol. 78, No. 93, Tuesday, May 14,  
2013, page 29205.

*Announced Time and Date of Second  
Prehearing Conference:* Thursday, May  
23, 2013, 11:00 a.m. Eastern.

The prehearing conference scheduled  
for May 23, 2013 will be continued to  
a later date, if necessary.

**CONTACT PERSON FOR ADDITIONAL  
INFORMATION:** Regina Maye, Paralegal  
Specialist, U.S. Coast Guard ALJ  
Program, (212) 825–1230.

Dated: May 22, 2013.

**Todd A. Stevenson,**  
*Secretary.*

[FR Doc. 2013–12575 Filed 5–24–13; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DOD–2013–OS–0111]

### Proposed Collection; Comment Request

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Defense Logistics Agency announces a proposed 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 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 July 29, 2013.

**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, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

**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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**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 the Defense Logistics Agency Headquarters, ATTN: Mr. Thomas Reinard, DLA Installation Support, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6221; or call (703) 767–5419.

*Title; Associated Form; and OMB Number:* Defense Logistics Agency (DLA) Police Center Records (POLC); OMB Control Number 0704–TBD.

*Needs and Uses:* DLA police require an integrated police records management system, PoliceCenter (POLC), to automate and standardize all of the common record keeping functions of DLA police. POLC shall provide records management of police operations, including property, incident reports, blotters, qualifications, dispatching, and other police information management considerations. The tool will allow authorized users the capability to collect, store, and access sensitive law enforcement information gathered by Police Officers. The tool will allow DLA Police to automate many police operational functions and assist with crime rate and trend analysis. Relevant law enforcement matters include, but are not limited to; traffic accidents, illegal parking, firearms records, suspicious activity, response to calls for service, criminal activity, alarm activations, medical emergencies, witnesses, victims, or suspect in a police matter, or any other situation which warrants police contact as outlined in DoD Directives and DLA Policy.

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

- To Federal, State, and local agencies having jurisdiction over or investigative interest in the substance of the investigation, for corrective action, debarment, or reporting purposes.

- To Government contractors employing individuals who are subjects of an investigation.

- To DLA contractors or vendors when the investigation pertains to a person they employ or to a product or service they provide to DoD when disclosure is necessary to accomplish or support corrective action.

*Affected Public:* Individuals and Households: Members of the public who are involved in any law enforcement or security matter on DLA property which requires DLA Police response or contact.

*Annual Burden Hours:* 225.

*Number of Respondents:* 450.

*Average Burden per Response:* 30 minutes.

*Frequency:* On occasion.

### SUPPLEMENTARY INFORMATION:

#### Summary of Information Collection

This POLC system contains the following categories of records: Individual's name, address and telephone number; social security number (not in all matters); driver's license number; Reports of Preliminary Inquiry; Criminal Information Reports; Reports of Investigation; Police Incident Reports; Crime Vulnerability Assessments; statements of witnesses, subjects, and victims; photographs; data collection reports; and other related papers by DLA Police Officers, Federal, State, and local law enforcement and investigative agencies.

Dated: May 22, 2013.

**Aaron Siegel,**

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

[FR Doc. 2013–12549 Filed 5–24–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal Nos. 13–22]

#### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a

section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives,

Transmittals 13-22 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 22, 2013.

**Aaron Siegel,**

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

**BILLING CODE 5001-06-P**



DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203  
ARLINGTON, VA 22202-5408

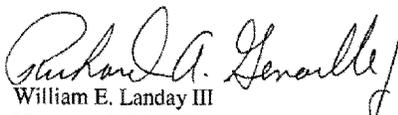
**MAY 21 2013**

The Honorable John A. Boehner  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-22, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost \$823 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

*For*   
William E. Landay III  
Vice Admiral, USN  
Director

Enclosures:

- 1. Transmittal
- 2. Policy Justification
- 3. Sensitivity of Technology



Transmittal No. 13–22

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser*: Republic of Korea.

(ii) *Total Estimated Value*:

Major Defense Equipment *	\$747 million
Other .....	\$ 76 million
<b>TOTAL .....</b>	<b>\$823 million</b>

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

The Government of the Republic of Korea (ROK) has requested a possible sale of weapons in support of a potential Direct Commercial Sale of F–15 SE aircraft. These aircraft weapons include the following:

274 AIM–120C–7 Advanced Medium Range Air-to-Air Missiles (AMRAAM)  
 6 AIM–120C–7 AMRAAM Guidance Sections  
 362 Joint Directed Attach Munition (JDAM) Tail Kits, BLU–109/KMU–557C/B (GBU–31) w/SAASM/AJ  
 780 JDAM Tail Kits, MK–82/BLU–111 KMU572C/B (GBU–38) w/SAASM/AJ  
 6 MK–82 Filled, Inert Bombs  
 170 JDAM Tail Kits, MK–84/BLU–117 KMU–556C/B (GBU–31) w/SAASM/AJ  
 1312 FMU–152A/B Fuzes (FZU–63 Initiator)  
 542 GBU–39/B Small Diameter Bombs  
 170 BLU–117 2000LB General Purpose Bombs  
 362 BLU–109 2000LB Penetrators  
 4 BLU–109 Inert Bombs  
 154 AIM–9X–2 (Blk II) Tactical Missiles w/DSU–41  
 33 CATM AIM–9X–2 (Blk II) Captive Air Training Missiles  
 7 AIM–9X–2 (Blk II) CATM Guidance Units  
 14 AIM–9X–2 (Blk II) Tactical Guidance Unit

Also included are containers, missile support and test equipment, provisioning, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering and technical support, and other related elements of program support.

\* As defined in Section 47(6) of the Arms Export Control Act.

(iv) *Military Department*: Air Force (BCO) and Navy (AKZ)

(v) *Prior Related Cases, if any*: FMS case BAI–\$1.7B—Pending

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or*

*Defense Services Proposed to be Sold*:

See Attached Annex

(viii) *Date Report Delivered to Congress*: 21 May 2013

*Policy Justification*

*Republic of Korea—F–15SE Aircraft Weapons*

The Government of the Republic of Korea (ROK) has requested a possible sale of weapons in support of a potential Direct Commercial Sale of F–15 SE aircraft. These aircraft weapons include the following:

274 AIM–120C–7 Advanced Medium Range Air-to-Air Missiles (AMRAAM)  
 6 AIM–120C–7 AMRAAM Guidance Sections  
 362 Joint Directed Attach Munition (JDAM) Tail Kits, BLU–109/KMU–557C/B (GBU–31) w/SAASM/AJ  
 780 JDAM Tail Kits, MK–82/BLU–111 KMU572C/B (GBU–38) w/SAASM/AJ  
 6 MK–82 Filled, Inert Bombs  
 170 JDAM Tail Kits, MK–84/BLU–117 KMU–556C/B (GBU–31) w/SAASM/AJ  
 1312 FMU–152A/B Fuzes (FZU–63 Initiator)  
 542 GBU–39/B Small Diameter Bombs  
 170 BLU–117 2000LB General Purpose Bombs  
 362 BLU–109 2000LB Penetrators  
 4 BLU–109 Inert Bombs  
 154 AIM–9X–2 (Blk II) Tactical Missiles w/DSU–41  
 33 CATM AIM–9X–2 (Blk II) Captive Air Training Missiles  
 7 AIM–9X–2 (Blk II) CATM Guidance Units  
 14 AIM–9X–2 (Blk II) Tactical Guidance Unit

Also included are containers, missile support and test equipment, provisioning, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering and technical support, and other related elements of program support. The estimated cost will be \$823 million.

This proposed sale will contribute to the foreign policy goals and national security objectives of the United States by meeting the legitimate security and defense needs of an ally and partner nation. The ROK continues to be an important force for peace, political stability, and economic progress in North East Asia.

The proposed sale will provide the ROK with aircraft weapons for the F–15SE. These aircraft and weapons will provide the ROK with a credible defense capability to deter aggression in the region and ensure interoperability with US forces. The ROK will use the

enhanced capability as a deterrent to regional threats and strengthen its homeland defense. Additionally, operational control (OPCON) will transfer from US Forces Korea/ Combined Forces Command (USFK/ CFC) to the ROK's Korea Command (KORCOM) in 2015. This upgrade will enhance the capability needed to support OPCON transfer.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon Missile Systems Company in Tucson, Arizona; The Boeing Corporation in St Louis, Missouri; Lockheed Martin Missile and Space in Bethesda, Maryland; and Kaman Precision Products in Middletown, Connecticut. There are no known offset agreements proposed in connection with these potential sales.

Implementation of this proposed sale will require multiple trips to Korea involving U.S. Government and contractor representatives for technical reviews/support, program management, and training over a period of eight years. U.S. contractor representatives will be required in Korea to conduct modification kit installation, testing, and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–22

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The AIM–120C–7 is a Beyond Visual Range (BVR) Advanced Medium Range Air-to-Air Missile (AMRAAM) designed to engage an enemy well before the pilot can see it. It improves the aerial capabilities of U.S. and allied aircraft to meet the threat of enemy air-to-air weapons. The AIM–120C–7 AMRAAM hardware, including the missile guidance section, is classified. The AIM–120C–7 has improved homing and greater range than previous versions.

2. The Joint Direct Attack Munition (JDAM) is a guidance kit that converts existing unguided free-fall bombs into precision-guided “smart” munitions. By adding a new tail section containing Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to MK–82, MK–84 and BLU–109 bombs, the cost effective JDAM provides highly accurate weapon delivery in any “flyable” weather. The

INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins. The JDAM AUR (All Up Round) and all of its components are unclassified, technical data for JDAM is classified.

3. The FMU-152A/B Fuze is a multi-function hard/soft target fuzing system developed for use in the MK80series, BLU-109, BLU-110, BLU-111, BLU-113, BLU-117, BLU-122, and in conjunction with JDAM and Paveway weapon kits with high drag and low drag tail kits. In addition to impact/post impact delay, the fuze is capable of accepting a signal from a separate proximity sensor. The key features of the FMU-152A/B include ease of installation and preparation for flight, compatibility with the proximity sensor fire signal, ability to sense a high drag delivery and the ability to manually set the arming and event times prior to takeoff, or electronically set them by cockpit selection prior to bomb release. The FMU-152A/B is unclassified.

4. The GBU-39/B Small Diameter Bomb I (SDB I) is a 250 lb class all-up round (AUR) that provides greater than 50 nm standoff range. The SDB I is a day or night adverse weather weapon with a precision engagement capability against fixed or stationary targets. The warhead is a high-strength steel penetration design with a blast or fragmentation capability. The SDB I is a Global Positioning System (GPS) guided weapon aided by Inertial Navigation System (INS). The SDB I includes an integrated height of burst (HoB) sensor that provides the weapon with an airburst capability. The SDB I AUR and all of its components are unclassified. Technical data for SDB I is classified

5. The BLU-117 is a 2,000 lb class General Purpose Bomb with a steel body and nose section for a proximity sensor, mechanical fuze adapter booster, or a penetrating nose plug. There is also a well in the aft section for a tail electric fuze. It is compatible with proximity sensor and mechanical/electrical/electronic fuzes. It uses a conical fin or laser/GPS guidance airfoil kit. The BLU-117 is unclassified.

6. The BLU-109 is a 2,000 lb class hard target penetrator warhead. It is typically detonated by an FMU-143 series tail fuze. The absence of a nose fuze well (cavity) makes the nose stronger and the weapon's base plate is reinforced to better protect the fuze from the shock of impact. The BLU-109 is not used as a standalone free fall bomb; it is a warhead for the following guided bombs and missiles: GBU-10, GBU-24, and GBU-31(v)3. The BLU-109 is unclassified.

7. The AIM-9X-2 SIDEWINDER Missile represents substantial increase in missile acquisition and kinematics performance over the AIM-9M and replaces the AIM-9X Block I Missile configuration. The missile includes an off-bore sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The software algorithms are the most sensitive portion of the AIM-9X-2 missile. The equipment, hardware, documentation, software and operational performance are classified. Performance and operating logic of the counter-countermeasures circuits are also classified. The AIM-9X-2 will result in the transfer of sensitive technology and information.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2013-12562 Filed 5-24-13; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal Nos. 13-24]

#### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13-24 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 22, 2013.

**Aaron Siegel,**

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



DEFENSE SECURITY COOPERATION AGENCY  
201 12TH STREET SOUTH, STE 203  
ARLINGTON, VA 22202-5408

MAY 21 2013

The Honorable John A. Boehner  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-24, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost \$793 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

*For*   
William E. Landay III  
Vice Admiral, USN  
Director

Enclosures:

- 1. Transmittal
- 2. Policy Justification
- 3. Sensitivity of Technology



Transmittal No. 13-24

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Republic of Korea

(ii) *Total Estimated Value:*

Major Defense Equipment\* .. \$733 million  
Other ..... \$ 60 million

TOTAL ..... \$793 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

The Government of the Republic of Korea (ROK) has requested a possible sale of F-35 aircraft weapons. These aircraft weapons include the following:

- 274 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM)
- 6 AIM-120C-7 AMRAAM Guidance Sections
- 530 Joint Directed Attack Munition (JDAM) Tail Kits, BLU-109/KMU-557C/B (GBU-31) w/SAASM/AJ
- 4 JDAM BLU-109 Load Build Trainers
- 6 MK-82 Filled Inert Bombs
- 4 BLU-109 Inert Bombs

- 1312 FMU-152A/B Fuzes (FZU-63 Initiator)
  - 542 GBU-39/B Small Diameter Bombs
  - 530 BLU-109 2000LB Penetrators
  - 780 GBU-12 Bomb
  - 4 GBU-12 Dummy Trainers
  - 154 AIM-9X-2 (Blk II) Tactical Missiles w/DSU-41
  - 33 AIM-9X-2 (Blk II) Captive Air Training Missiles (CATM)
  - 7 AIM-9X-2 (Blk II) CATM Guidance Units
  - 14 AIM-9X-2 (Blk II) Tactical Guidance Units
- Also included are containers, missile support and test equipment,

provisioning, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering and technical support, and other related elements of program support.

\* As defined in Section 47(6) of the Arms Export Control Act.

(iv) *Military Department*: Air Force (YAJ) and Navy (AKZ)

(v) *Prior Related Cases, if any*: FMS case SAC-\$9.4B-Pending

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: 21 May 2013

#### POLICY JUSTIFICATION

Republic of Korea—F-35 Aircraft Weapons

The Government of the Republic of Korea (ROK) has requested a possible sale of F-35 aircraft weapons. These aircraft weapons include the following:

274 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM)  
6 AIM-120C-7 AMRAAM Guidance Sections

530 Joint Directed Attack Munition (JDAM) Tail Kits, BLU-109/KMU-557C/B (GBU-31) w/SAASM/AJ

4 JDAM BLU-109 Load Build Trainers

6 MK-82 Filled Inert Bombs

4 BLU-109 Inert Bombs

1312 FMU-152A/B Fuzes (FZU-63 Initiator)

542 GBU-39/B Small Diameter Bombs

530 BLU-109 2000LB Penetrators

780 GBU-12 Bomb

4 GBU-12 Dummy Trainers

154 AIM-9X-2 (Blk II) Tactical Missiles w/DSU-41

33 AIM-9X-2 (Blk II) Captive Air Training Missiles (CATM)

7 AIM-9X-2 (Blk II) CATM Guidance Units

14 AIM-9X-2 (Blk II) Tactical Guidance Units

Also included are containers, missile support and test equipment, provisioning, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering and technical support, and other related elements of program support. The estimated cost will be \$793 million.

This proposed sale will contribute to the foreign policy goals and national security objectives of the United States by meeting the legitimate security and defense needs of an ally and partner

nation. The ROK continues to be an important force for peace, political stability, and economic progress in North East Asia.

The proposed sale will provide the ROK with aircraft weapons for the F-35. These aircraft and weapons will provide the ROK with a credible defense capability to deter aggression in the region and ensure interoperability with U.S. forces. The ROK will use the enhanced capability as a deterrent to regional threats and strengthen its homeland defense. Additionally, operational control (OPCON) will transfer from U.S. Forces Korea/ Combined Forces Command (USFK/ CFC) to the ROK's Korea Command (KORCOM) in 2015. This upgrade will enhance the capability needed to support OPCON transfer.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon Missile Systems Company in Tucson, Arizona; The Boeing Corporation in St Louis, Missouri; Lockheed Martin Missile and Space in Bethesda, Maryland; and Kaman Precision Products in Middletown, Connecticut. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips to Korea involving U.S. Government and contractor representatives for technical reviews/support, program management, and training over a period of eight years. U.S. contractor representatives will be required in Korea to conduct modification kit installation, testing, and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13-24

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) Of the Arms Export Control Act

Annex

Item No. vii

#### (vii) *Sensitivity of Technology*:

1. The AIM-120C-7 is a Beyond Visual Range (BVR) Advanced Medium Range Air-to-Air Missile (AMRAAM) designed to engage an enemy well before the pilot can see it. It improves the aerial capabilities of US and allied aircraft to meet the threat of enemy air-to-air weapons. The AIM-120C-7 AMRAAM hardware, including the missile guidance section, is classified. AIM-120C-7 has improved homing and greater range than previous versions.

2. The Joint Direct Attack Munition (JDAM) is a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to MK-82, MK-84 and BLU-109 bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins. The JDAM AUR (All Up Round) and all of its components are unclassified, but the technical data for JDAM is classified.

3. The FMU-152A/B Fuze is a multi-function hard/soft target fuzing system developed for use in the MK80series, BLU-109, BLU-110, BLU-111, BLU-113, BLU-117, BLU-122, and in conjunction with JDAM and Paveway weapon kits with high drag and low drag tail kits. In addition to impact/post impact delay, the fuze is capable of accepting a signal from a separate proximity sensor. The key features of the FMU-152A/B include ease of installation and preparation for flight, compatibility with the proximity sensor fire signal, ability to sense a high drag delivery and the ability to manually set the arming and event times prior to takeoff, or electronically set them by cockpit selection prior to bomb release. The FMU-152A/B is unclassified.

4. The GBU-39/B Small Diameter Bomb I (SDB I) is a 250 lb class all-up round (AUR) that provides greater than 50 nm standoff range. The SDB I is a day or night adverse weather weapon with a precision engagement capability against fixed or stationary targets. The warhead is a high-strength steel penetration design with a blast or fragmentation capability. The SDB I is a Global Positioning System (GPS) guided weapon aided by Inertial Navigation System (INS). The SDB I includes an integrated height of burst (HoB) sensor that provides the weapon with an airburst capability. The SDB I AUR and all of its components are unclassified. Technical data for SDB I is classified.

5. The BLU-109 is a 2,000 lb class hard target penetrator warhead. It is typically detonated by an FMU-143 series tail fuze. The absence of a nose fuze well (cavity) makes the nose stronger and the weapon's base plate is reinforced to better protect the fuze from the shock of impact. The BLU-109 is not used as a standalone free fall bomb; it is a warhead for the following guided bombs and missiles: GBU-10, GBU-24 and GBU-31(v)3/B. The BLU-109 is unclassified.

6. The GBU-12 B/B is a 500 lb class laser guided bomb that uses the MK 82 or BLU-111 warhead. The Paveway II system has folding wings that open upon release for increased aircraft payload and maneuverability. This weapon is primarily used for precision bombing against non-hardened targets. The GBU-12 technical data and documentation are classified.

7. The AIM-9X-2 SIDEWINDER Missile represents a substantial increase in missile acquisition and kinematics performance over the AIM-9M and replaces the AIM-9X Block I Missile configuration. The missile includes an off-bore sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The equipment, hardware, documentation, software and operational performance are classified. Performance and operating logic of the counter-countermeasures circuits are also classified. The AIM-9X-2 will result in the transfer of sensitive technology and information.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2013-12563 Filed 5-24-13; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2013-OS-0110]

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice to amend a System of Records.

**SUMMARY:** The Defense Finance and Accounting Service is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective on June 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 27, 2013.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

\* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name and docket number 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:** Mr. Gregory Outlaw, (317)510-4591.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 22, 2013.

**Aaron Siegel,**

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

### T7901b

#### SYSTEM NAME:

Consolidated Returned Check System (August 13, 2007, 72 FR 45230).

#### CHANGES:

\* \* \* \* \*

#### SYSTEM NAME:

Delete entry and replace with "Consolidated Returned Items Stop Payment System (CRISPS)."

#### SYSTEM LOCATION:

Delete entry and replace with "Defense Information Systems Agency, Defense Enterprise Computing Center—Oklahoma City, 8705 Industrial Blvd., Bldg 3900, Tinker AFB, Oklahoma City, OK 73145-3064.

Defense Finance and Accounting Service—Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249-2700."

\* \* \* \* \*

#### NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves

is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS-ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

Requests should contain individual's full name, SSN for verification, current address for reply, and provide a reasonable description of what they are seeking."

#### RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS-ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

Request should contain individual's full name, SSN for verification, current address for reply, and telephone number."

#### CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11-R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS-ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249-0150."

\* \* \* \* \*

[FR Doc. 2013-12572 Filed 5-24-13; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2013-OS-0105]

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to alter a System of Records.

**SUMMARY:** The Defense Finance and Accounting Service proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective on June 28, 2013 unless

comments are received which result in a contrary determination. Comments will be accepted on or before June 27, 2013.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name and docket number 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:** Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS-HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249-0150 or at (317) 212-4591.

**SUPPLEMENTARY INFORMATION:** The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 6, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 22, 2013.

**Aaron Siegel,**

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

## T7208

### SYSTEM NAME:

General Accounting and Finance System—Defense Transaction Interface Module (June 4, 2007, 72 FR 30784).

### CHANGES:

Change System ID to read "T7330b."

### SYSTEM NAME:

Delete entry and replace with "Defense Finance & Accounting Service Transaction Interface Module (DTIM)."

\* \* \* \* \*

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Defense Finance and Accounting Service employees, United States Air Force (active duty, reserve, and guard members), Department of Defense civilian employees for the Defense Security Service, and the National Geospatial-Intelligence Agency."

### CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Social Security Number (SSN), and General and Working Capital Funds transactions."

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; DoD Directive 5118.5, Department of Defense Financial Management Regulation (DoDFMR) 7000.14-R Vol. 4, Defense Finance and Accounting Service; 31 U.S.C. Sections 3511, Prescribing accounting requirements and developing accounting systems and 3512, Executive agency accounting and other financial management reports and plans and 3513, Financial reporting and accounting system; and E.O. 9397 (SSN), as amended."

### PURPOSE(S):

Delete entry and replace with "The system will enable the United States Air Force, Defense Security Service, and the National Geospatial-Intelligence Agency (NGA) to produce transaction-driven financial statements in support of Defense Finance and Accounting Service financial mission."

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the United States Department of the Treasury to report the financial status of the General and Working Capital funds.

To the General Accounting Office for audit purposes.

The DoD Blanket Routine Uses published at the beginning of the DFAS

compilation of systems of records notices may apply to this system."

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Delete entry and replace with "Electronic storage media."

#### RETRIEVABILITY:

Delete entry and replace with "Social Security Number (SSN) and transaction number."

#### SAFEGUARDS:

Delete entry and replace with "Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and user identifications are used to control access to the system data, and procedures are in place to deter browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system."

#### RETENTION AND DISPOSAL:

Delete entry and replace with "Records are cut off at the end of the fiscal year, and destroyed in 6 years and 3 months after cutoff."

#### SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Defense Finance and Accounting Service-Columbus, I&T, System Manager, Cash, General Funds and Miscellaneous Division, 3990 E Broad Street, Columbus, OH 43213-1152."

#### NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS-ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249-0150."

Requests should contain individual's full name, SSN for verification, current address, and provide a reasonable description of what they are seeking."

#### RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS-ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249-0150."

Request should contain individual's full name, SSN for verification, current address, and telephone number."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11-R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS-ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249-0150."

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with "Defense Finance and Accounting Service civilian employees, United Stated Air Force (active duty, reserve, and guard members), Department of Defense civilian employees for the Defense Security Service, and the National Geospatial-Intelligence Agency."

\* \* \* \* \*

[FR Doc. 2013-12583 Filed 5-24-13; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

**U.S. Air Force Academy Board of Visitors; Notice of Meeting**

**AGENCY:** U.S. Air Force Academy Board of Visitors

**ACTION:** Meeting Notice.

**SUMMARY:** In accordance with 10 U.S.C. Section 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will hold a meeting in the Russell Senate Office Building, Room SR-485, in Washington, DC on June 14, 2013. The meeting will begin at 10:00 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include a Superintendent's Update; a Character Update; Diversity and Inclusion Plan brief; Development of a USAFA Second Lieutenant, Part 2 brief; a Subcommittee Out-brief; and an Ethics Training brief. In accordance with 5 U.S.C. Section 552b, as amended, and 41 CFR Section 102-3.155, the Administrative Assistant to the Secretary of the Air Force in consultation with the Office of the Air Force General Counsel has determined

in writing that the public interest requires one session of this meeting shall be closed to the public because it involves matters covered by subsection (c)(6) of 5 U.S.C. 552b. Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR Section 102-3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force address detailed below at any time. However, if a written statement is not received at least 10 calendar days before the first day of the meeting which is the subject of this notice, then it may not be provided to or considered by the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairman and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request. If after review of timely submitted written comments and the BoV Chairman and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present the issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairman to allow specific personnel to make oral presentations before the BoV. In accordance with 41 CFR Section 102-3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairman.

**Contact Information:** For additional information or to attend this BoV meeting, contact Lt Col LaMont Coleman, Accessions and Training Division, AF/A1PT, 1040 Air Force

Pentagon, Washington, DC 20330, (703) 614-6931.

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 2013-12614 Filed 5-24-13; 8:45 am]

BILLING CODE 5001-10-P

**DEPARTMENT OF DEFENSE**

**Department of the Army**

[Docket ID: USA-2013-0015]

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to alter a System of Records.

**SUMMARY:** The Department of the Army proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective on June 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 27, 2013.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

\* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name and docket number 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:** Mr. Leroy Jones, Jr., Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315-3827 or by phone at 703-428-6185.

**SUPPLEMENTARY INFORMATION:** The Department of Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in

**FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Web site at <http://dpclo.defense.gov/privacy/SORNs/component/army/index.html>.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 16, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 22, 2013.

**Aaron Siegel,**

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

#### **A0190-47 DAPM-ACC**

##### **SYSTEM NAME:**

Army Corrections and Review Board Records (June 28, 2010, 75 FR 36644).

\* \* \* \* \*

##### **CHANGES:**

##### **SYSTEM NAME:**

Delete entry and replace with "Army Corrections System and Parole Board Records."

##### **SYSTEM LOCATION:**

Delete entry and replace with "Office of the Provost Marshal General, 2800 Army Pentagon, Washington, DC 20310-2800; Army Corrections Command, 150 Army Pentagon, Washington, DC 20310-0150; Army Corrections System Facilities, Navy and Marine Corps Brigs; and Army Clemency and Parole Board Office, 1901 South Bell Street, Arlington, VA 22202-4508."

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Any military member confined at a DoD correctional facility or approved local civilian jails as a result of courts-martial, or pending trial by courts-martial and under Army control, and those under community supervision once released from a DoD correctional facility and/or transferred to the Federal Bureau of Prisons (FBOP) under the current Memorandum of Agreement between Department of the Army and the FBOP; victim/witness', and informants."

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with "Military members full name, surname,

Social Security Numbers (SSN), DoD-ID Number, registration number, charges, court martial, personal background history, former commander's report, no-contact order, funds account information health and comfort issuance, fingerprints, classification, progress reports, victim/witness' full name, address and telephone number, victim impact statements, co-conspirator affiliation, informants full name, address and telephone number, informants statement, legal guardianship, court martial correspondence, sex offender and DNA requirements and processing, classification, disciplinary and observation records, clothing and equipment, education and program certificates, clemency and parole actions, recommended actions and dispositions, parolee/supervisee release agreements, certificate of parole and similar relevant documents."

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. Chapter 48, Military Correctional Facilities, Section 951, Establishment; organization; administration; DODD 1030.1, Victim and Witness Assistance; DODI 1030.2, Victim and Witness Assistance Procedures; DODD 1325.04, Confinement of Military Prisoners and Administration of Military Correctional Programs and Facilities; DODI 1325.7, Administration of Military Correctional Facilities and Clemency and Parole Authority; AR 15-130, Army Clemency and Parole Board; Army Regulation 190-47, The Army Corrections System; and E.O. 9397 (SSN), as amended."

##### **PURPOSE(S):**

Delete entry and replace with "The system is used for management of correctional facility population, demographic studies, status of discipline and responsiveness of personnel procedures, as well as confinement utilization factors such as population turnover or relapsing into crime. These records provide relevant information required for proper clemency and parole decisions that the Service Clemency and Parole Board makes for the Service Secretaries."

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state and local confinement/correctional agencies for use in the administration of correctional programs including custody classification, employment, training and educational assignments, treatment programs, clemency, restoration to duty or parole actions, verification of offender's criminal records, employment records, and social histories.

To state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement, (2) information about the individual for inclusion in a state operated sex offender registry and (3) DNA, or deoxyribonucleic acid policy on collecting samples from military prisoners.

To the Bureau of Prisons for the purpose of providing notification that the military transferee has been convicted of a sexually violent offense or an offense against a victim who is a minor.

To victims and witnesses of a crime(s) for the purpose of notifying them of date of parole or clemency hearing and other release related activities.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices may also apply to this system."

\* \* \* \* \*

##### **RETENTION AND DISPOSAL:**

Delete entry and replace with "Automated records for prisoners in the U.S. Army Corrections System facilities are retained for 2 years following expiration of sentence/completion of parole/maximum release date, following which they are retired to the National Personnel Records Center (NPRC) for 50 years before destruction by shredding or burning. Records will be downloaded to paper copies before retiring to NPRC.

**Note:** Transfer of a prisoner from one DoD correctional facility or Federal Bureau of Prisons' Facility to another is not construed as release from confinement. When a prisoner is transferred to another facility, his/her file is electronically transferred to the gaining facility.

Information on tape/disc is erased after 3 years.

Army Clemency Board case files are returned on completion of Board action to the DoD Correctional Facility, where they are retained for 2 years following expiration of sentence/completion of parole/maximum release date, following which they are retired to the NPRC and

maintained for 50 years before being destroyed by shredding or burning.”

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with “Office of the Provost Marshal General, 2800 Army Pentagon, Washington, DC 20310–2800; Army Corrections Command, 150 Army Pentagon, Washington, DC 20310–0150.”

**NOTIFICATION PROCEDURE:**

Delete entry and replace with “Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the correctional facility where confined.

For verification purposes, individual should provide their full name, SSN and/or DoD-ID Number, dates of confinement, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ‘I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)’.

If executed within the United States, its territories, possessions, or commonwealths: ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.”

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with “Individuals seeking access to information about themselves contained in this system should address written inquiries to the commander of the correctional facility.

For verification purposes, individual should provide their full name, SSN and/or DoD-ID Number, dates of confinement, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ‘I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)’.

If executed within the United States, its territories, possessions, or

commonwealths: ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.”

\* \* \* \* \*

[FR Doc. 2013–12569 Filed 5–24–13; 8:45 am]

**BILLING CODE 5001–06–P**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

[Docket ID: USA–2013–0014]

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to delete two Systems of Records.

**SUMMARY:** The Department of the Army is deleting two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective on June 28, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before June 27, 2013.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number 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:** Mr.

Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–6185.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the

address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Army proposes to delete two systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 21, 2013.

**Aaron Siegel,**

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

**DELETION:**

**AAFES 0602.04b**

Claims and/or Litigation Against AAFES (August 9, 1996, 61 FR 41572).

**REASON:**

The records have been transferred under System of Records Notice, AAFES 0602.04a, Legal Office Management System (May 9, 2001, 66 FR 23683); therefore, AAFES 0602.04b, Claims and/or Litigation Against AAFES can be deleted.

**DELETION:**

**AAFES 0607.01**

Confidential Financial Disclosure Report (August 9, 1996, 61 FR 41572).

**REASON:**

The report is covered by the Systems of Records Notices OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (January 22, 2003, 68 FR 3098; correction published May 8, 2003, 68 FR 24744) and OGE/GOVT–2 Executive Branch Confidential Financial Disclosure Reports (January 22, 2003, 68 FR 3098; correction published May 8, 2003, 68 FR 24744); therefore, AAFES 0607.01, Confidential Financial Disclosure Report can be deleted.

[FR Doc. 2013–12492 Filed 5–24–13; 8:45 am]

**BILLING CODE 5001–06–P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**Notice of Intent To Prepare an Environmental Impact Statement for Military Readiness Activities at the Fallon Range Training Complex and To Announce Public Scoping Meetings**

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations parts 1500–1508), the Department of the Navy (DoN) announces its intent to prepare an Environmental Impact Statement (EIS) to assess the potential environmental consequences of continued and enhanced military training in the Fallon Range Training Complex (FRTC) Study Area. The FRTC Study Area is a set of well-defined geographic areas in the high desert of northern Nevada, encompassing: Special Use Airspace, including restricted areas, Military Operations Areas, and Air Traffic Control Assigned Airspace; land training ranges and stationary land training areas; fixed and mobile land targets, and control facilities; Threat Electronic Warfare (EW), Early Warning Radars and Surface to Air Missile systems and emulators; and instrumentation facilities. The DoN is inviting the U.S. Bureau of Land Management and the Bureau of Reclamation to be cooperating agencies in the preparation of the EIS.

**DATES AND ADDRESSES:** Four open house information sessions will be held between 5:00 p.m. and 7:00 p.m. on:

1. Monday, June 10, 2013, at Churchill County Commission Chambers, 155 North Taylor Street, Fallon, Nevada 89406.
2. Tuesday, June 11, 2013, at Crescent Valley Town Office Boardroom, 5045 Tenabo Avenue, Crescent Valley, Nevada 89821.
3. Wednesday, June 12, 2013, at Veterans of Foreign Wars Post 3677 Main Hall, 426 D Avenue, Gabbs, Nevada 89409.
4. Thursday, June 13, 2013, at Emma Nevada Town Hall, 135 Court Street, Austin, Nevada 89310.

Each of the four open house information sessions will be informal and consist of information stations staffed by DoN representatives. Additional information concerning each open house will be available on the EIS Web page located at: <http://www.FRTCCEIS.com>.

**FOR FURTHER INFORMATION CONTACT:** Naval Facilities Engineering Command Southwest; Attention: Ms. A. Kelley, Code EV21.AK; 1220 Pacific Highway; Building 1, 5th Floor; San Diego, California 92132.

**SUPPLEMENTARY INFORMATION:** In 2000, the DoN completed an EIS for Proposed FRTC Requirements. The DoN's new Proposed Action is to continue and enhance training activities within the

existing FRTC. In order to support the DoN's requirements for fleet readiness, the DoN proposes to adjust baseline training activities from current levels to the levels needed to accommodate evolving mission requirements, including those resulting from training, tactics development, testing, and eventual introduction of new platforms (aircraft) and weapons systems into the Fleet.

The FRTC is a set of well-defined geographic areas in the high desert of northern Nevada encompassing multiple airspaces, land range areas, and electronic systems used primarily for training operations. The FRTC encompasses air and land training areas in the mid-western portion of Nevada. In total, the complex encompasses 241,127 acres of land and 14,182 square nautical miles of airspace. A portion of the FRTC, Naval Air Station Fallon, is located six miles to the southeast of the city of Fallon.

The purpose of the Proposed Action is to conduct and facilitate training activities at the FRTC to ensure that the DoN achieves its mission, to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom. The alternatives analyzed in the FRTC EIS are as follows.

1. *No Action Alternative:* Baseline training activities, as defined by the tempo and type of training, when averaged over recent representative years.
2. *Alternative 1:* Overall adjustments to types and levels of activities, from the baseline as necessary to support current and planned DoN training requirements, from 8,558 annual activities under the No Action Alternative to 9,147 annual activities. In addition, the DoN proposes range investments involving upgrades to the Tactical Combat Training System, upgrade of Threat EW Systems, and installation of fiber optic telecommunications infrastructure.
3. *Alternative 2:* Consists of Alternative 1 plus a 10 percent increase annually for all training activities, from 9,147 annual activities under Alternative 1 to 10,061 annual activities.

Resource areas to be addressed in the EIS will include, but not be limited to, terrestrial resources and biological resources, geology, soils and water resources, land use and recreation, air quality, noise, cultural resources, transportation, socioeconomics, environmental justice, and public health and safety.

The scoping process will be used to identify community concerns and issues that will be addressed in the EIS. Federal agencies, state agencies, local

agencies, Native American Indian Tribes and Nations, the public, and interested persons are encouraged to provide comments to the DoN to identify specific issues or topics of environmental concern that the commenter believes the DoN should consider. All comments, provided orally or in writing at the scoping meetings, via the project Web site, or mail will receive the same consideration during EIS preparation. All comments must be postmarked or received online no later than July 8, 2013. Comments should be mailed to: Naval Facilities Engineering Command Southwest; Attention: Ms. A. Kelley, Code EV21.AK; 1220 Pacific Highway; Building 1, 5th Floor; San Diego, California 92132.

Dated: May 17, 2013.

**C.K. Chiappetta,**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2013–12423 Filed 5–24–13; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### President's Board of Advisors on Historically Black Colleges and Universities

**AGENCY:** U.S. Department of Education, President's Board of Advisors on Historically Black Colleges and Universities (Board).

**ACTION:** Notice of an Open Meeting.

**SUMMARY:** This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. The notice also describes the functions of the Board. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

**DATES:** Tuesday, June 11, 2013.

**TIME:** 9:00 a.m.–2:00 p.m. (EST).

**ADDRESSES:** The Churchill Hotel, Kalorama, 1914 Connecticut Ave. NW., Washington, DC 20009, (202) 797–2000.

**FOR FURTHER INFORMATION CONTACT:** John P. Brown, Jr., Acting Executive Director, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW., Washington, DC 20204; telephone: (202) 453–5634 or (202) 453–5630, fax: (202) 453–5632.

**SUPPLEMENTARY INFORMATION:** The President's Board of Advisors on Historically Black Colleges and Universities (the Board) is established by Executive Order 13532 (February 26, 2010). The Board 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 Board is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President and the Secretary in the following areas: (i) Improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the nation in reaching its goal of having the highest proportion of college graduates by 2020; (iv) elevating the public awareness of HBCUs; and (v) encouraging public-private investments in HBCUs.

#### Agenda

The Board will receive updates from the Chairman of the President's Board of Advisors on HBCUs, the Board's subcommittees and the Acting Executive Director of the White House Initiative on HBCUs on their respective activities, thus far, during Fiscal Year 2013 including activities that have occurred since the Board's last meeting, which was held on September 27, 2012. In addition, the Board will discuss possible strategies to meet its duties under its charter and special guests have been invited to discuss the Direct PLUS Loan Program and initiatives that are directed at two-year colleges.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify John P. Brown, Jr., Acting Executive Director, White House Initiative on HBCUs, at (202) 453-5634, no later than Wednesday, June 5, 2013. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Tuesday, June 11, 2013, from 1:30 p.m.–2:00 p.m. Individuals who wish to provide comments will be allowed three to five minutes to speak. Those members of the public interested in submitting written comments may do

so by submitting them to the attention of John P. Brown, Jr., White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202, by Friday, June 7, 2013.

Records are kept of all Board proceedings and are available for public inspection at the office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC, 20202, Monday through Friday (excluding federal holidays) during the hours of 9:00 a.m. to 5:00 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 the following site: [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. If you have 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: May 17, 2013.

**Martha J. Kanter,**

*Under Secretary, U.S. Department of Education.*

[FR Doc. 2013-12626 Filed 5-24-13; 8:45 am]

**BILLING CODE 4000-01-P**

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a combined meeting of the Environmental Monitoring, Surveillance and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, June 12, 2013 2:00 p.m.–4:00 p.m.

**ADDRESSES:** NNMCAB Conference Room, 94 Cities of Gold Road, Pojoaque, NM 87506.

#### FOR FURTHER INFORMATION CONTACT:

Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995-0393; Fax (505) 989-1752 or Email: [menice.santistevan@nnsa.doe.gov](mailto:menice.santistevan@nnsa.doe.gov).

**SUPPLEMENTARY INFORMATION:** Purpose of the Board: The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring, Surveillance and Remediation Committee (EMS&R): The EMS&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EMS&R Committee will keep abreast of DOE-EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE-EM for action.

**Purpose of the Waste Management (WM) Committee:** The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda:

1. 2:00 p.m. Approval of Agenda
2. 2:05 p.m. Approval of Minutes of May 8, 2013
3. 2:10 p.m. Old Business
4. 2:20 p.m. New Business
5. 2:40 p.m. Update from Executive Committee—Carlos Valdez, Chair
6. 2:50 p.m. Update from DOE—Lee Bishop, Deputy Designated Federal Officer
7. 3:00 p.m. Presentation by DOE—Lee Bishop
- RAD Waste Classifications at Los Alamos
8. 3:45 p.m. Public Comment Period
9. 4:00 p.m. Adjourn

**Public Participation:** The NNMCAB's EMS&R and WM Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or

special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: <http://www.nnmcab.energy.gov/>.

Issued at Washington, DC on May 21, 2013.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2013-12559 Filed 5-24-13; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 14295-001]

#### Public Utility District No. 1 of Snohomish County; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for an Original License and Commencing Pre-filing Process.

b. *Project No.:* 14295-001.

c. *Dated Filed:* March 21, 2013.

d. *Submitted By:* Public Utility District No. 1 of Snohomish County (Snohomish PUD).

e. *Name of Project:* Sunset Fish Passage and Energy Project.

f. *Location:* On the South Fork Skykomish River, one mile south of the town of Index in Snohomish County, Washington. The project would not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations

h. *Potential Applicant Contact:* Kim D. Moore, Assistant General Manager of Generation, Water and Corporate Services, Public Utility District No. 1 of Snohomish County, 2320 California Street, PO Box 1107, Everett, WA 98206.

i. *FERC Contact:* John Baummer at (202) 502-6837 or email at [john.baummer@ferc.gov](mailto:john.baummer@ferc.gov).

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

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 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 Snohomish PUD as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Snohomish PUD filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), 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.

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.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission. Documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, send documents to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All filings with the Commission must include on the first page, the project name (Sunset Falls Fish Passage and Energy Project) and number (P-14295-001), and bear the appropriate heading: "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by July 19, 2013.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

**Scoping Meetings**

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

*Evening Scoping Meeting*

Date: Wednesday, June 12, 2013.

Time: 6:00 p.m.

Location: Town of Index Fire

Department, 512 Avenue A, Index,  
WA 98256

Phone: (360) 793-0866

*Daytime Scoping Meeting*

Date: Thursday, June 13, 2013

Time: 10:00 a.m.

Location: Washington Department of  
Ecology Headquarters, 300 Desmond  
Drive SE., Lacey, WA 98503

Phone: (360) 407-6000

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

**Environmental Site Review**

Snohomish PUD will conduct an environmental site review of the project on Wednesday, June 12, 2013, starting at 2:00 p.m. All participants should meet at the Gold Bar Park and Ride, located at Intersection State Road 2 and 2nd Street, Gold Bar, WA 98251. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Ms. Dawn Pressler of Snohomish PUD at (425) 783-1709 on or before June 6, 2013.

**Meeting Objectives**

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

**Meeting Procedures**

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: May 20, 2013.

**Kimberly D. Bose,**

Secretary.

[FR Doc. 2013-12506 Filed 5-24-13; 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:* RP13-914-000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Tenaska Negotiated Rate Agreement to be effective 5/16/2013.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5046.

*Comments Due:* 5 p.m. ET 5/28/13.

*Docket Numbers:* RP13-915-000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Macquarie Negotiated Rate Agreement to be effective 5/16/2013.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5055.

*Comments Due:* 5 p.m. ET 5/28/13.

*Docket Numbers:* RP13-916-000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Renaissance LPS-RO to be effective 5/16/2013.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5095.

*Comments Due:* 5 p.m. ET 5/28/13.

*Docket Numbers:* RP13-917-000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* NJR Energy Negotiated Rate Agreement to be effective 5/16/2013.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5104.

*Comments Due:* 5 p.m. ET 5/28/13.

*Docket Numbers:* RP13-918-000.

*Applicants:* White River Hub, LLC.

*Description:* 2013 Fuel Gas Reimbursement Report of White River Hub, LLC.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5140.

*Comments Due:* 5 p.m. ET 5/28/13.

*Docket Numbers:* RP13-919-000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate Filing—Interstate Power to be effective 5/21/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517-5131.

*Comments Due:* 5 p.m. ET 5/29/13.

*Docket Numbers:* RP13-920-000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: BP Canada Energy Negotiated Rate to be effective 6/1/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517-5146.

*Comments Due:* 5 p.m. ET 5/29/13.

*Docket Numbers:* RP13-921-000.

*Applicants:* Empire Pipeline, Inc.

*Description:* Empire Pipeline, Inc. submits tariff filing per 154.204:

Correction to GTC Sec 14 to be effective 10/28/2011.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517-5151.

*Comments Due:* 5 p.m. ET 5/29/13.

*Docket Numbers:* RP13-922-000.

*Applicants:* Equitrans, L.P.

*Description:* Equitrans, L.P. submits tariff filing per 154.203: Compliance Filing—Sunrise Retainage to be effective 7/1/2013.

*Filed Date:* 5/20/13.

*Accession Number:* 20130520-5024.

*Comments Due:* 5 p.m. ET 6/3/13.

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:* RP13–240–001.  
*Applicants:* Trailblazer Pipeline Company LLC.

*Description:* FTB Compliance (5–16–13) to be effective 5/1/2013.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516–5094.

*Comments Due:* 5 p.m. ET 5/23/13.

*Docket Numbers:* RP13–378–002.

*Applicants:* Viking Gas Transmission Company.

*Description:* Viking Gas Transmission Company submits tariff filing per 154.203: 2012 Housekeeping Compliance II to be effective 1/22/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5061.

*Comments Due:* 5 p.m. ET 5/29/13.

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: May 20, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–12471 Filed 5–24–13; 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:* ER12–954–001.

*Applicants:* Calpine Mid Merit, LLC.

*Description:* Calpine Mid Merit, LLC Refund Report Informational Filing to be effective N/A.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516–5115.

*Comments Due:* 5 p.m. ET 6/6/13.

*Docket Numbers:* ER13–1258–003.

*Applicants:* Land O'Lakes, Inc.

*Description:* Inquiry Response to be effective 6/14/2013.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516–5105.

*Comments Due:* 5 p.m. ET 6/6/13.

*Docket Numbers:* ER13–1277–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. Errata to Pending Filing—OA Schedule 12 Membership List to be effective 3/31/2013.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516–5116.

*Comments Due:* 5 p.m. ET 6/6/13.

*Docket Numbers:* ER13–1507–000.

*Applicants:* NorthWestern Corporation.

*Description:* SA 683—SOCC Services Agreement with MATL LLP to be effective 7/15/2013.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516–5108.

*Comments Due:* 5 p.m. ET 6/6/13.

*Docket Numbers:* ER13–1508–000.

*Applicants:* Entergy Arkansas, Inc.

*Description:* Entergy Arkansas, Inc. Unit Power Sales/Designated Power Purchase Tariff to be effective 12/19/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5037.

*Comments Due:* 5 p.m. ET 6/7/13.

*Docket Numbers:* ER13–1509–000.

*Applicants:* Entergy Gulf States Louisiana, L.L.C.

*Description:* Entergy Gulf States Louisiana, L.L.C. Unit Power Sales/Designated Power Purchase Tariff to be effective 12/19/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5038.

*Comments Due:* 5 p.m. ET 6/7/13.

*Docket Numbers:* ER13–1510–000.

*Applicants:* Entergy Louisiana, LLC.

*Description:* Entergy Louisiana, LLC Unit Power Sales/Designated Power Purchase Tariff to be effective 12/19/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5039.

*Comments Due:* 5 p.m. ET 6/7/13.

*Docket Numbers:* ER13–1511–000.

*Applicants:* Entergy Mississippi, Inc.

*Description:* Entergy Mississippi, Inc. Unit Power Sales/Designated Power Purchase Tariff to be effective 12/19/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5040.

*Comments Due:* 5 p.m. ET 6/7/13.

*Docket Numbers:* ER13–1512–000.

*Applicants:* Entergy New Orleans, Inc.

*Description:* Entergy New Orleans, Inc. Unit Power Sales/Designated Power

Purchase Tariff to be effective 12/19/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5041.

*Comments Due:* 5 p.m. ET 6/7/13.

*Docket Numbers:* ER13–1513–000.

*Applicants:* Entergy Texas, Inc.

*Description:* Entergy Texas, Inc. Unit Power Sales/Designated Power Purchase Tariff to be effective 12/19/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5042.

*Comments Due:* 5 p.m. ET 6/7/13.

*Docket Numbers:* ER13–1514–000.

*Applicants:* Public Service Company of Colorado.

*Description:* Public Service Company of Colorado 2013–5–17 341–PSCo-

TSGT Davis Interim CA to be effective 3/4/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5047.

*Comments Due:* 5 p.m. ET 6/7/13.

*Docket Numbers:* ER13–1515–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Midcontinent Independent System Operator, Inc.

2013–05–17 RSP ARR to be effective 7/16/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5085.

*Comments Due:* 5 p.m. ET 6/7/13.

*Docket Numbers:* ER13–1516–000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc. Rhode Island Engine Genco LLC

Resource Termination Filing.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5097.

*Comments Due:* 5 p.m. ET 6/7/13.

*Docket Numbers:* ER13–1517–000.

*Applicants:* Massachusetts Electric Company.

*Description:* Massachusetts Electric Company Interconnection Agreement Between MECO and Trigen Revere for

NECCO Cogen Plant to be effective 7/17/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5128.

*Comments Due:* 5 p.m. ET 6/7/13.

*Docket Numbers:* ER13–1518–000.

*Applicants:* PJM Interconnection,

L.L.C.

*Description:* PJM Interconnection, L.L.C. Amendments to Schedule 9—PJM Settlement to be effective 7/17/2013.

*Filed Date:* 5/17/13.

*Accession Number:* 20130517–5140.

*Comments Due:* 5 p.m. ET 6/7/13.

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: May 17, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013-12475 Filed 5-24-13; 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:* ER10-2881-007; ER10-2882-007; ER10-2883-007; ER10-2884-007; ER10-2885-007; ER10-2641-007; ER10-2663-007; ER10-2886-007; ER13-1101-002.

*Applicants:* Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, Limited Partnership, Southern Company—Florida LLC, Southern Turner Cimarron I, LLC, Spectrum Nevada Sola, LLA.

*Description:* Notice of Change in Status of Alabama Power Company, et al.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5079.

*Comments Due:* 5 p.m. ET 6/6/13.

*Docket Numbers:* ER11-3262-002.

*Applicants:* Trans Bay Cable LLC.

*Description:* Transmission Rate Case Refund Report to be Effective N/A under ER11-3262 to be effective N/A.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5078.

*Comments Due:* 5 p.m. ET 6/6/13.

*Docket Numbers:* ER13-741-001.

*Applicants:* ISO New England Inc.

*Description:* Compliance Filing RE: Oakfield Large Generator Interconnection Agreement to be effective N/A.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5043.

*Comments Due:* 5 p.m. ET 6/6/13.

*Docket Numbers:* ER13-1495-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* 2252R1 Cottonwood Wind Project GIA to be effective 4/18/2013.

*Filed Date:* 5/15/13.

*Accession Number:* 20130515-5132.

*Comments Due:* 5 p.m. ET 6/5/13.

*Docket Numbers:* ER13-1496-000.

*Applicants:* AL Sandersville, LLC.

*Description:* Revised Market Based Rate Tariff Filing to be effective 5/16/2013.

*Filed Date:* 5/15/13.

*Accession Number:* 20130515-5143.

*Comments Due:* 5 p.m. ET 6/5/13.

*Docket Numbers:* ER13-1497-000.

*Applicants:* Effingham County Power, LLC.

*Description:* Revised Market Based Rate Tariff Filing to be effective 5/16/2013.

*Filed Date:* 5/15/13.

*Accession Number:* 20130515-5144.

*Comments Due:* 5 p.m. ET 6/5/13.

*Docket Numbers:* ER13-1498-000.

*Applicants:* MPC Generating, LLC.

*Description:* Revised Market Based Rate Tariff Filing to be effective 5/16/2013.

*Filed Date:* 5/15/13.

*Accession Number:* 20130515-5145.

*Comments Due:* 5 p.m. ET 6/5/13.

*Docket Numbers:* ER13-1499-000.

*Applicants:* Sabine Cogen, LP.

*Description:* Revised Market Based Rate Tariff Filing to be effective 5/16/2013.

*Filed Date:* 5/15/13.

*Accession Number:* 20130515-5147.

*Comments Due:* 5 p.m. ET 6/5/13.

*Docket Numbers:* ER13-1500-000.

*Applicants:* Walton County Power, LLC.

*Description:* Revised Market Based Rate Tariff Filing to be effective 5/16/2013.

*Filed Date:* 5/15/13.

*Accession Number:* 20130515-5152.

*Comments Due:* 5 p.m. ET 6/5/13.

*Docket Numbers:* ER13-1501-000.

*Applicants:* Washington County Power, LLC.

*Description:* Revised Market Based Rate Tariff Filing to be effective 5/16/2013.

*Filed Date:* 5/15/13.

*Accession Number:* 20130515-5154.

*Comments Due:* 5 p.m. ET 6/5/13.

*Docket Numbers:* ER13-1502-000.

*Applicants:* Dynegy Roseton, L.L.C.

*Description:* Notice of Cancellation to be effective 5/16/2013.

*Filed Date:* 5/15/13.

*Accession Number:* 20130515-5155.

*Comments Due:* 5 p.m. ET 6/5/13.

*Docket Numbers:* ER13-1503-000.

*Applicants:* Southern California Edison Company.

*Description:* Amendment to Exhibit A of WDAT Service Agreement with SCE-RAP for CREST to be effective 5/16/2013.

*Filed Date:* 5/15/13.

*Accession Number:* 20130515-5156.

*Comments Due:* 5 p.m. ET 6/5/13.

*Docket Numbers:* ER13-1504-000.

*Applicants:* SWG Arapahoe, LLC.

*Description:* Application for Market-Based Rate Authority to be effective 6/10/2013.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5024.

*Comments Due:* 5 p.m. ET 6/6/13.

*Docket Numbers:* ER13-1505-000.

*Applicants:* PacifiCorp.

*Description:* Iberdrola NITSA to be effective 5/1/2013 under ER13-1505 Filing Type: 10.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5054.

*Comments Due:* 5 p.m. ET 6/6/13.

*Docket Numbers:* ER13-1506-000.

*Applicants:* PPL EnergyPlus, LLC.

*Description:* Notice of Cancellation of Service Agreement of PPL EnergyPlus, LLC.

*Filed Date:* 5/16/13.

*Accession Number:* 20130516-5072.

*Comments Due:* 5 p.m. ET 6/6/13.

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: May 16, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013-12472 Filed 5-24-13; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket Nos. EL13-65-000; QF90-143-006]

**Yuma Cogeneration Associates; Notice of Filing**

Take notice that on May 17, 2013, pursuant to section 292.205(c) of the regulations of the Federal Energy Regulatory Commission (Commission) implementing the Public Utility Regulatory Policies Act of 1978 (PURPA), Yuma Cogeneration Associates (Yuma Cogeneration) submitted a petition for a limited waiver of the efficiency standard in section 292.205(a)(2) of the Commission's regulations for a topping-cycle cogeneration qualifying facility (QF) located in Yuma, Arizona for the calendar years 2010, 2011, and 2012.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the 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 5 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:* 5:00 p.m. Eastern Time on June 7, 2013.

Dated: May 20, 2013.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2013-12507 Filed 5-24-13; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. EL13-67-000]

**City of Boulder, Colorado; Notice of Petition for Declaratory Order**

Take notice that on May 17, 2013, the City of Boulder, Colorado (Boulder), pursuant to section 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, filed a petition for declaratory order requesting the Commission to confirm that upon becoming a retail-turned-wholesale customer Boulder will have no stranded cost obligation for the portion of its wholesale power requirements that Boulder purchases from its former retail supplier, Public Service Company of Colorado.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically

should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on June 17, 2013.

Dated: May 20, 2013.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2013-12508 Filed 5-24-13; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. AD10-12-004]

**Increasing Market and Planning Efficiency Through Improved Software; Supplemental Agenda Notice**

Take notice that Commission staff will convene a technical conference on June 24, 25, and 26, 2013 to discuss opportunities for increasing real-time and day-ahead market efficiency through improved software. A detailed agenda with the list of times for the selected speakers and presentation abstracts will be published on the Commission's Web site<sup>1</sup> after May 13, 2013.

This conference will bring together diverse experts from public utilities, the software industry, government, research centers and academia and is intended to build on the discussions initiated in the previous Commission staff technical conferences on increasing market and planning efficiency through improved software.

The agenda for this conference is attached. If any changes occur, the revised agenda will be posted on the calendar page for this event on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) prior to the event.

<sup>1</sup> <http://ferc.gov/industries/electric/indus-act/market-planning/2013-conference.asp>.

Dated: May 20, 2013.

**Kimberly D. Bose,**  
Secretary.

BILLING CODE 6717-01-P

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Monday, June 24, 2013

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8:15 AM	Arrive and welcome (3M-2) <b>Richard O'Neill</b> , Federal Energy Regulatory Commission ( <i>Washington, DC</i> )
8:45 AM	Session M1 (Meeting Room 3M-2) <b>Hybrid Approach for Incorporating Uncertainty in CAISO's Market Operations</b> Khaled Abdul-Rahman, Hani Alarian, Clyde Loutan, California ISO ( <i>Folsom, CA</i> ) <b>Applying Robust Optimization to MISO Look Ahead Unit Commitment</b> Yonghong Chen, MISO ( <i>Carmel, IN</i> ) Xing Wang, Alstom Grid ( <i>Redmond, WA</i> ) Yongpei Guan, University of Florida ( <i>Gainesville, FL</i> ) <b>Mixed Integer Programming (MIP) for Faster and More Optimal Solutions: The NYISO Proof of Concept Experience</b> Matthew Musto, Muhammad Marwali, NYISO ( <i>Rensselaer, NY</i> ) <b>Preventive-Corrective control for contingency modeling in AC PF based SCUC</b> Petar Ristanovic, California ISO ( <i>Folsom, CA</i> ) James Frame, Siemens ( <i>Minneapolis, MN</i> )
10:45 AM	Break
11:00 AM	Session M2 (Meeting Room 3M-2) <b>External Network Model Expansion and Energy Imbalance Market at CAISO</b> Mark Rothleder, George Angelidis, James Price, California ISO ( <i>Folsom, CA</i> ) <b>Modeling, Simulation, and Computational Needs for RTOs: A PJM Perspective</b> Paul Sotkiewicz, PJM Interconnection, LLC ( <i>Norristown, PA</i> ) <b>Co-optimization of Congestion Revenue Rights in ERCOT Day-Ahead Market</b> Chien-Ning Yu, Vladimir Brandwajn, Show Chang, ABB/Ventyx ( <i>Santa Clara, CA</i> ) Sainath M. Moorthy, ERCOT ( <i>Taylor, TX</i> ) <b>Pricing Mechanism for Time-Coupled Multi-interval Real-Time Dispatch</b> Tengshun Peng, Dhiman Chatterjee, MISO ( <i>Carmel, IN</i> )
1:00 PM	Lunch
1:45 PM	Session M3 (Meeting Room 3M-2) <b>Practical Experience Developing Software for Large-Scale Outage Coordination</b> John Condren, James David, Boris Gisin, PowerGEM ( <i>Clifton Park, NY</i> ) <b>Automated Transmission Outage Analysis Using Nodal Based Model</b> Nancy Huang, Dan Moscovitz, PJM Interconnection ( <i>Norristown, PA</i> ) John Condren, PowerGEM ( <i>Clifton Park, NY</i> ) <b>Pricing Scheme for Two-Stage Market Clearing Model</b> Jinye Zhao, Eugene Litvinov, Tongxin Zheng, Feng Zhao, ISO New England ( <i>Holyoke, MA</i> ) <b>Stochastic Unit Commitment with Intermittent Distributed Wind Generation via Markovian Analysis and Optimization</b> Yaowen Yu, Peter B. Luh, Mikhail A. Bragin, University of Connecticut ( <i>Storrs, CT</i> ) Eugene Litvinov, Tongxin Zheng, Feng Zhao, Jinye Zhao, ISO New England ( <i>Holyoke, MA</i> )
3:45 PM	Break
4:00 PM	Session M4 (Meeting Room 3M-2) <b>Multi-Area Security Constrained Economic Dispatch</b> Raquel Lim, Muhammad Marwali, New York Independent System Operator ( <i>Rensselaer, NY</i> ) <b>External Network Model Expansion at CAISO</b> Mark Rothleder, George Angelidis, James Price, California ISO ( <i>Folsom, CA</i> ) <b>An Application of High Performance Computing to Transmission Switching</b> Zhu Yang, Shmuel S. Oren, University of California, Berkeley ( <i>Albany, CA</i> ) Anthony Papavasiliou, Catholic University of Louvain Kory Hedman, Pranavamoorthy Balasubramanian, Arizona State University ( <i>Tempe, AZ</i> )
5:30 PM	Adjourn

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 Tuesday, June 25, 2013
 

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 8:15 AM Arrive and welcome (3M-2)
 

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8:30 AM Session T1-A (Meeting Room 3M-2)

**SMART-ISO: Modeling Uncertainty in the Electricity Markets**

 Hugo Simao, Warren Powell, Boris Defourny, Princeton University (*Princeton, NJ*)

**Multifaceted Solution for Managing Flexibility with High Penetration of Renewable Resources**

 Nivad Navid, MISO (*Carmel, IN*)

**Secure Planning and Operations of Systems with Stochastic Sources, Energy Storage and Active Demand**

 Ray Zimmerman, C. Lindsay Anderson, Robert J. Thomas, Cornell University (*Ithaca, NY*)

 Carlos Murillo-Sánchez, National University of Colombia (*Manizales, Caldas, Colombia*)

**Clustering-Based Strategies for Stochastic Programs**

 Victor M. Zavala, Argonne National Laboratory (*Lemont, IL*)
 

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Session T1-B (Meeting Room 3M-4)

**Profit Maximizing Storage Allocation in Power Grids**

 Anya Castillo, Dennice Gayme, John's Hopkins University (*Baltimore, MD*)

**Application of Semidefinite Programming to Large-scale Optimal Power Flow Problems**

 Michael Ferris, Daniel Molzhan, Bernie Leseutre, Chris De Marco, University of Wisconsin (*Madison, WI*)

**AC-Nonlinear Chance Constrained Optimal Power Flow**

 Daniel Bienstock, Columbia University (*New York, NY*)

 Michael Chertkov, Russell Bent, Los Alamos National Lab (*Los Alamos, NM*)

**A Novel Parallel Approach to Solving Constrained Linear Optimization Problems**

 Stephen Elbert, Kurt Glaesemann, Karan Kalsi, Pacific Northwest National Laboratory (*Richland, WA*)
 

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 10:30 AM Break
 

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10:45 AM Session T2-A (Meeting Room 3M-2)

**Unified Stochastic and Robust Unit Commitment**

 Yongpei Guan, Chaoyue Zhao, University of Florida (*Gainesville, FL*)

**Robust and Dynamic Reserve Policies**

 Kory Hedman, Joshua Lyon, Fengyu Wang, Muhong Zhang, Arizona State University (*Tempe, AZ*)

**Stochastic Programming for Improved Electricity Market Operations with Renewable Energy**

 Audun Botterud, Canan Uckun, Argonne National Laboratory (*Argonne, IL*)

 John Birge, University of Chicago (*Chicago, IL*)

**Compact Stochastic Unit Commitment Formulation**

 Germán Morales-España, Andres Ramos, Universidad Pontificia Comillas (*Madrid, Spain*)

 José M. Arroyo, Universidad de Castilla la Mancha (*Ciudad Real, Castilla la Mancha, Spain*)
 

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Session T2-B (Meeting Room 3M-4)

**Computational Performance of Solution Techniques Applied to the ACOPTF**

 Anya Castillo, John's Hopkins University (*Baltimore, MD*)

 Richard P. O'Neill, Federal Energy Regulatory Commission (*Washington, DC*)

**Modeling of Hardware- and Systems-Related Transmission Limits: The Use of AC OPF for Relaxing Transmission Limits to Enhance Reliability and Efficiency**

 Marija Ilic, Jeffrey Lang, NETSS (*Sudbury, MA*)

**Low-Rank Solution for Nonlinear optimization over AC Transmission Networks**

 Javad Lavaei, Ramtin Madani, Somayeh Sojoudi, California Institute of Technology (*Pasadena, CA*)

**Valid Inequalities for the Alternating Current Optimal Power Flow Problem**

 Chen Chen, Shmuel Oren, Alper Atamturk, UC Berkeley (*Berkeley, CA*)

 Richard O'Neill, Federal Energy Regulatory Commission (*Washington, DC*)
 

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 12:45 PM Lunch
 

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 Tuesday, June 25, 2013
 

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1:30 PM Session T3-A (Meeting Room 3M-2)  
**Assessing the Flexibility Requirements in Power Systems**  
 Daniel Kirschen, Yury Dvorking, University of Washington (*Seattle, WA*)  
**Incorporating variability and uncertainty into reserve requirement methodologies**  
 Erik Ela, Michael Milligan, Bri-Mathias Hodge, Brendan Kirby, Ibrahim Krad, Mark OMalley,  
 National Renewable Energy Laboratory (*Golden, CO*)  
**Optimal Unit Commitment under Uncertainty in Electricity Markets**  
 Fernando Alvarado, Rajesh Rajaraman  
**Large-scaled Optimal Power Flow with No Guarantee on Feasibility**  
 Manuel Ruiz, Girardeau, Artelys (*Paris, France*)  
 Maeght, Fliscounakis, Panciatici, RTE (*Paris, France*)

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Session T3-B (Meeting Room 3M-4)  
**Scalable Strategies for Large-scale AC-SCOPF Problems**  
 Nai-Yuan Chiang, Victor M. Zavala, Argonne National Laboratory (*Lemont, IL*)  
 Andreas Grothey, University of Edinburgh (*Edinburgh, United Kingdom*)  
**An AC-Feasible Linear Approximation Approach to Finding the Optimal Power Flow**  
 Paula Lipka, UC Berkeley (*Albany, CA*)  
**Security Constrained AC Optimal Power Flow (SC-OPF): Current Status, Implementation  
 Issues and Future Directions**  
 Guorui Zhang, Quanta Technology (*Raleigh, NC*)  
 Xiaoming Feng, ABB USCRC (*Raleigh, NC*)  
**Decomposition Approaches to Transmission Switching under N-1 Reliability Requirements**  
 John Sirola, Jean-Paul Watson, Sandia National Laboratories (*Albuquerque, NM*)

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3:30 PM Break

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3:45 PM Session T4-A (Meeting Room 3M-2)  
**Price Responsive Demand for Operating Reserves in co-optimized Electricity Markets with  
 Wind Power**  
 Zhi Zhou, Audun Botterud, Argonne National Laboratory (*Argonne, IL*)  
**Multi-Settlement Simulation of Stochastic Reserve Determination**  
 Robert Enriken, EPRI (*Palo Alto, CA*)  
 Taiyou Yong, Eversource Consulting (*Folsom, CA*)  
 Russ Philbrick, Power System Optimization (*Shoreline, WA*)  
**An Affine Arithmetic Method to Solve Stochastic Optimal Power Flow Problems with  
 Uncertainties**  
 Mehrdad Pirnia, University of Waterloo (*Waterloo, Canada*)  
**A Synergistic Combination of Surrogate Lagrangian Relaxation and Branch-and-Cut for MIP  
 Problems in Power Systems**  
 Peter Luh, University of Connecticut (*Storrs, CT*)  
 Joseph Yan, Gary Stern, Southern California Edison (*Rosemead, CA*)  
**N-1-1 Contingency-Constrained Grid Operations**  
 Richard Chen, Jean-Paul Watson, Sandia National Laboratories (*Livermore, CA*)  
 Neng Fan, University of Arizona (*Tucson, AZ*)

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Session T4-B (Meeting Room 3M-4)  
**Optimal Feeder Reconfiguration**  
 Steven Low, Qiuyu Peng, Caltech (*Pasadena, CA*)  
**Correcting Optimal Transmission Switching for AC Power Flows**  
 Clayton Barrows, NREL (*Golden, CO*)  
 Seth Blumsack, Penn State University (*University Park, PA*)  
 Paul Hines, University of Vermont (*Burlington, VT*)  
**Advances in Topology Control Algorithms (TCA)**  
 Pablo Ruiz, T. Bruce Tsuchida, The Brattle Group (*Cambridge, MA*)  
 Michael C. Caramanis, Justin M. Foster, Evgeniy A. Goldis, Xiaoguang Li, Boston University  
 (*Boston, MA*)  
 C. Russ Philbrick, Polaris Systems Optimization (*Shoreline, WA*)  
 Aleksandr M. Rudkevich, Newton Energy Group (*Newton, MA*)  
 Richard D. Tabors, Across The Charles (*Cambridge, MA*)  
**Inclusion of Post-Contingency Actions in Security Constrained Scheduling**  
 Peng Peng, Show Chang, ABB/Ventyx (*Santa Clara, CA*)

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5:45 PM Adjourn

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 Wednesday, June 26, 2013
 

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 8:15 AM Arrive and welcome (3M-2)
 

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8:30 AM Session W1-A (Meeting Room 3M-2)

**Study of Transmission Switching Under Contingencies: Formulations and Algorithms**

 Bo Zeng, Long Zhao, Wei Yuan, University of South Florida (*Tampa, FL*)

**Security-Constrained Optimal Power Flow with Sparsity Control and Efficient Parallel Algorithms**

 Dzung Phan, IBM T.J. Watson Research Center (*Yorktown Heights, NY*)

 Andy Sun, Georgia Institute of Technology (*Atlanta, GA*)

**Candidate Selection for Transmission Switching in Large Power Networks**

 Kwok Cheung, Jun Wu, Alstom Grid (*Redmond, WA*)

**Transmission Switching for Improving Wind Power Utilization**

 Feng Qiu, Jianhui Wang, Argonne National Laboratory (*Argonne, IL*)
 

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Session W1-B (Meeting Room 3M-3)

**Stochastic Unit Commitment: Scalable Computation and Experimental Results**

 Jean-Paul Watson, Sandia National Laboratories (*Albuquerque, NM*)

 Sarah Ryan, Iowa State University (*Ames, IA*)

 David Woodruff, University of California Davis (*Davis, CA*)

**MIP Based System Flexible Capacity Requirements Determination**

 Alex Papalexopoulos, ECCO International (*San Francisco, CA*)

**Decomposition Methods for Stochastic Unit Commitment Problems**

 Suvtrajeet Sen, University of Southern California (*Los Angeles, CA*)

**Stochastic Unit Commitment: Stochastic Process Modeling for Load and Renewables**

 David Woodruff, University of California Davis (*Davis, CA*)

 Sarah Ryan, Iowa State University (*Ames, IA*)

 Jean-Paul Watson, Sandia National Laboratories (*Albuquerque, NM*)
 

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 10:30 AM Break
 

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10:45 AM Session W2-A (Meeting Room 3M-2)

**Smart Wire Grid: Providing Advanced Power Flow Control for the Grid**

 Stewart Ramsay, Smart Wire Grid, Inc. (*Oakland, CA*)

**HVDC Grid Technology - Benefits of Hybrid AC/DC Grids and Optimal Power Flow Modeling Considerations**

 Xiaoming Feng, ABB (*Raleigh, NC*)

**Tres Amigas: Uniting the Electric Power Grid**

 Kenneth Laughlin, Tres Amigas, LLC. (*Santa Fe, NM*)

**Beyond Real Time: the Computational Challenges of Forecasting Dynamic Line Ratings**

 Eric Hsieh, Nexans (*Bethel, CT*)

 Stuart Malkin, Nexans (*Portland, OR*)

**Implementing DLRs in the control room at PacifiCorp - Technology Successes and Challenges**

 TBD, Pacificorp (*Portland, OR*)
 

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Session W2-B (Meeting Room 3M-3)

**Scalable Parallel Analysis of Power Grid Models Using Swift**

 Ketan Maheshwari, Victor M Zavala, Justin Wozniak, Mark Hereld, Michael Wilde, Argonne National Laboratory (*Argonne, IL*)

**Improving Market Planning and Efficiency Software Through Dynamic Integration of High Quality Data**

 Christopher Vizas, Nicholas Lagakos, Anjan Deb, Chris Vizas, Jack Barker, Victor Kaybulkin, SmartSenseCom, Inc. (*Washington, DC*)

**Highly Dispatchable and Distributed Demand Response for the Integration of Distributed Generation**

 Amit Narayan, AutoGrid Systems (*Palo Alto, CA*)

**Solving MPEC Models with the KNITRO Nonlinear Solver**

 Richard Waltz, Jorge Nocedal, Ziena Optimization LLC (*Evanston, IL*)

 Arnaud Renaud, Sylvain Mouret, Artelys (*Paris, France*)

**New methods for measuring voltage stability limits utilizing HELM tools**

 Jason Black, Battelle (*Columbus, OH*)
 

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 2:00 PM Adjourn
 

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**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OAR-2003-0120; FRL-9817-7]

**Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, EPA ICR Number 1765.07****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this document announces that the EPA is planning to submit a request to renew an existing approved Information Collection Request to the Office of Management and Budget with changes to the ICR burden estimates. This ICR is scheduled to expire on October 31, 2013. Before submitting the Information Collection Request to the Office of Management and Budget for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection.

**DATES:** Additional comments may be submitted on or before July 29, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0120 by one of the following methods: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Email:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

Include Docket ID Number EPA-HQ-OAR-2003-0120 in the subject line of the message.

- *Fax:* (202) 566-1741.
- *Mail:* U.S. Environmental

Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue NW., Mail Code: 2822T, Washington, DC 20460.

- *Hand Delivery:* To send comments or documents through a courier service, the address to use is: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Electronic Docket ID No. EPA-HQ-OAR-2003-0120. The EPA's policy is

that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov) including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise to be protected through [www.regulations.gov](http://www.regulations.gov) or email. The Web site is an "anonymous access" system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to us without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment as a result of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** Kim Teal, Office of Air and Radiation, Office of Air Quality Planning and Standards, Mail Code D243-04, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5580; fax number: (919) 541-5450; email address: [teal.kim@epa.gov](mailto:teal.kim@epa.gov).

**SUPPLEMENTARY INFORMATION:****How can I access the docket and/or submit comments?**

The EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR-2003-0120, which is available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone for the Reading Room is (202)566-1744, and the telephone for the Air Docket is 202-564-1742.

Use [www.regulations.gov](http://www.regulations.gov) to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

**What information particularly interests the EPA?**

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, the EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including 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. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25 persons) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What should I consider when I prepare my comments for the EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by the EPA, be sure to identify the docket ID

number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

**To what information collection activity or ICR does this apply?**

Docket ID No. EPA-HQ-OAR-2003-0120.

*Affected Entities:* Entities potentially affected by this action as respondents are manufacturers and importers of automobile refinish coatings and coating components. Manufacturers of automobile refinish coatings and coating components fall within standard industrial classification (SIC) 2851, "Paints, Varnishes, Lacquers, Enamels, and Allied Products" and North American Industry Classification System (NAICS) code 325510, "Paint and Coating Manufacturing." Importers of automobile refinish coatings and coating components fall within SIC 5198, "Wholesale Trade: Paints, Varnishes, and Supplies," NAICS code 422950, "Paint, Varnish and Supplies Wholesalers," and NAICS code 444120, "Paint and Wallpaper Stores."

*Title:* Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings (40 CFR part 59).

*ICR number:* EPA ICR Number 1765.07, OMB Control Number 2060-0353.

*ICR status:* This ICR is currently scheduled to expire on October 31, 2013. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of the OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. Under the OMB regulations, the agency may continue to conduct or sponsor the collection of information while this submission is pending at the OMB.

*Abstract:* The EPA is required under section 183(e) of the Clean Air Act to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Automobile

refinish coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart B. The reports required under the standards enable the EPA to identify all coating and coating component manufacturers and importers in the United States and to determine which coatings and coating components are subject to the standards, based on dates of manufacture. Respondents are manufacturers, distributors and importers of automobile refinish coatings. Responses to the collection are mandatory under 40 CFR part 59, Subpart B—National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information.

The EPA provided notice and sought comments on the previous ICR renewal on March 23, 2010, (75 FR 13759) pursuant to 5 CFR 1320.8(d). The EPA received no comments to that notice.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The ICR provides a detailed explanation of the agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 4.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* One or less per year.

*Estimated total annual burden hours:* 14.

*Estimated total annual costs:* \$924. This includes an estimated burden cost of \$0 and an estimated cost of \$0 for capital investment or maintenance and operational costs.

**Are there changes in the estimates from the last approval?**

There are slight changes being made to the estimates in this ICR from what the EPA estimated in the earlier renewal of this ICR.

**What is the next step in the process for this ICR?**

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to the OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to the OMB and the opportunity to submit additional comments to the OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 21, 2013.

**Peter Tsirigotis,**

*Director, Sector Policies and Programs Division.*

[FR Doc. 2013-12593 Filed 5-24-13; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9817-8]

**National Environmental Justice Advisory Council; Notification of Public Teleconference Meeting and Public Comment**

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

**ACTION:** Notification of Public Teleconference Meeting and Public Comment.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92-463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will host a public teleconference meeting on Thursday, June 13, 2013, from 1:00 p.m. to 3:30 p.m. Eastern Time. The primary topics of discussion will be (1) preliminary recommendations concerning EPA's research programs and the scientific foundation needed to address and prevent environmental inequities and (2) EPA's draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.

There will be a public comment period from 2:30 p.m. to 3:00 p.m. Eastern Time. Members of the public are

encouraged to provide comments relevant to the topics of the meeting.

For additional information about registering to attend the meeting or to provide public comment, please see the "Registration" and **SUPPLEMENTARY INFORMATION** sections below. Due to a limited number of telephone lines, attendance will be on a first-come, first served basis. Pre-registration is required. Registration for the teleconference meeting closes at Noon Eastern Time on Monday, June 10, 2013. The deadline to sign up to speak during the public comment period, or to submit written public comments, is also Noon, Monday, June 10, 2013.

**DATES:** The NEJAC teleconference meeting on Thursday, June 13, 2013, will begin promptly at 1:00 p.m. Eastern Time.

**Registration:** Registrations will primarily be processed via the NEJAC meeting Web page, [www.epa.gov/environmentaljustice/nejac/meetings.html](http://www.epa.gov/environmentaljustice/nejac/meetings.html). Registrations can also be submitted by email to [NEJACJune2013Mtg@AlwaysPursuingExcellence.com](mailto:NEJACJune2013Mtg@AlwaysPursuingExcellence.com) with "Register for the NEJAC June 2013 Teleconference" in the subject line; or by phone or fax to 877-773-0779. When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also state whether you would like to be put on the list to provide public comment, and whether you are submitting written comments before the Monday, June 10, 2013, noon deadline. Non-English speaking attendees wishing to arrange for a foreign language interpreter may also make appropriate arrangements using the email address or telephone/fax number.

**FOR FURTHER INFORMATION CONTACT:**

Questions or correspondence concerning the teleconference meeting should be directed to Mr. Aaron Bell, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., (MC2201A), Washington, DC 20460; by telephone at 202-564-1044; via email at [Bell.Aaron@epa.gov](mailto:bell.aaron@epa.gov); or by fax at 202-564-1624. Additional information about the NEJAC and upcoming meetings is available at: [www.epa.gov/environmentaljustice/nejac](http://www.epa.gov/environmentaljustice/nejac).

**SUPPLEMENTARY INFORMATION:** The Charter of the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, "advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific,

technological, regulatory, and economic issues related to environmental justice."

**A. Public Comment:** Members of the public who wish to attend the Thursday, June 13, 2013, public teleconference meeting to provide public comment must pre-register by Noon Eastern Time on Monday, June 10, 2013. Individuals or groups making remarks during the public comment period will be limited to five minutes. To accommodate the large number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by Noon Eastern Time on Monday, June 10, 2013, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to EPA's support contractor, APEX Direct, Inc., via email or fax as listed in the **FOR FURTHER INFORMATION CONTACT** section above.

**B. Information about Services for Individuals with Disabilities:** For information about access or services for individuals with disabilities, please contact Ms. Estela Rosas, EPA Contractor, APEX Direct, Inc., at 877-773-0779 or via email at [NEJACJune2013Mtg@AlwaysPursuingExcellence.com](mailto:NEJACJune2013Mtg@AlwaysPursuingExcellence.com). To request special accommodations for a disability, please contact Ms. Rosas at least four working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the "Registration" section above.

Dated: May 17, 2013.

**Victoria J. Robinson,**

*Designated Federal Officer, Office of Environmental Justice, U.S. EPA.*

[FR Doc. 2013-12597 Filed 5-24-13; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**Proposed Agency Information Collection Activities; Submission for OMB Review; Comment Request Re CRA Sunshine**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and comment request.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), to comment on renewal, with no change, of its information collection entitled, "CRA Sunshine" (OMB No. 3064-0139).

In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the PRA. On March 19, 2013 (78 FR 16853), the FDIC solicited public comment for a 60-day period on renewal without change of its "CRA Sunshine" information collection (OMB No. 3064-0139). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

**DATES:** Comments must be submitted on or before June 27, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- <http://www.fdic.gov/regulations/laws/federal/notices.html>.
- *email:* [comments@fdic.gov](mailto:comments@fdic.gov).
- *Mail:* Leneta G. Gregorie (202-898-3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street NW., Room NY-5050, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer,

Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For further information about this information collection, please contact Leneta G. Gregorie, by telephone at (202) 898-3719 or by mail at the address identified above.

**SUPPLEMENTARY INFORMATION:** The FDIC is requesting OMB approval to renew the following information collection:

*Title:* CRA Sunshine.

*OMB Number:* 3064-0139.

*Frequency of Response:* On occasion.

*Affected Public:* Insured state nonmember banks and their affiliates, and nongovernmental entities and persons.

*Estimated Number of Respondents:* 16.

*Estimated Time per Response:* 8.625 hours.

*Total Annual Burden:* 138 hours.

*General Description of Collection:*

This collection implements a statutory requirement imposing reporting, disclosure and recordkeeping requirements on some community investment-related agreements between insured depository institutions or affiliates, and nongovernmental entities or persons.

#### Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the 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; 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. All comments will become a matter of public record.

Dated at Washington, DC, this 21st day of May, 2013.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2013-12578 Filed 5-24-13; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS13-13]

### Appraisal Subcommittee; Policy Statements

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Adoption of revised Policy Statements.

**SUMMARY:** The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council requested public comment on a proposal to revise its Policy Statements<sup>1</sup> providing guidance to ensure State appraiser regulatory programs (Programs)<sup>2</sup> comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI).<sup>3</sup> Comments were received from 29 individuals, companies and State entities. The ASC has considered comments received in adopting the revised Policy Statements as set forth in this notice. The revised Policy Statements supersede current Policy Statements on the date set forth below.

**DATES:** *Effective Date:* June 1, 2013.

**FOR FURTHER INFORMATION CONTACT:**

Alice M. Ritter, General Counsel ([alice@asc.gov](mailto:alice@asc.gov) or (202) 595-7577), or Dan Rhoads, Attorney-Advisor ([dan@asc.gov](mailto:dan@asc.gov) or (202) 289-2739), or by mail at Appraisal Subcommittee, 1401 H Street NW., Suite 760, Washington, DC 20005.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Title XI was adopted to provide protection of Federal financial and public policy interests by establishing certain requirements for appraisals performed for federally related transactions.<sup>4</sup> The ASC<sup>5</sup> was

<sup>1</sup> 77 FR 52721 (Aug. 30, 2012).

<sup>2</sup> The 50 States, the District of Columbia, and four Territories, which are the Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, and United States Virgin Islands, have State appraiser certifying and licensing agencies with Programs monitored by the ASC through the Compliance Review process.

<sup>3</sup> 12 U.S.C. 3331-3355, 12 U.S.C. 1708(e).

<sup>4</sup> Any real estate related financial transaction which: a) a federal financial institutions regulatory agency engages in, contracts for, or regulates; and b) requires the services of an appraiser (12 U.S.C. 3350(4)).

<sup>5</sup> The ASC Board is comprised of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration). The other

two members are designated by the heads of the Department of Housing and Urban Development and the Federal Housing Finance Agency (12 U.S.C. 3310, 12 U.S.C. 1708(e)).

established by Title XI to further these goals. The ASC monitors requirements established by the States for certification and licensing of individuals qualified to perform appraisals in connection with federally related transactions, including codes of professional responsibility, and also maintains the National Registry of State certified and licensed appraisers.<sup>6</sup> The ASC's obligation to monitor State Programs for compliance with the requirements of Title XI is met through periodic Compliance Reviews of each State's Program.

Policy Statements were adopted in 1993 by the ASC to assist States in developing and maintaining their Programs in compliance with Title XI, and were substantively supplemented in 1997 to address issues related to temporary practice and reciprocity. Since 1997, the Policy Statements have remained largely unchanged with the exception of amendments made in 2008 to Policy Statement 10, *Enforcement*. Passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010 and implementation of the ASC's revised Compliance Review process in 2009 necessitated revision of the existing Policy Statements to enhance guidance for States as they implement changes required by the Dodd-Frank Act. The revised Policy Statements are intended to provide States with the necessary information to maintain their Programs in compliance with Title XI. Further, the revised Policy Statements address the ASC's authority to evaluate a State Program for compliance with Title XI and to take sanctions against a State when its Program does not comply with Title XI. Policy Statements 1 through 7 corresponded with the seven categories evaluated during the ASC's Compliance Review process and included in the ASC Compliance Review Report to a State. Policy Statement 8 addresses ASC procedures for imposition of interim sanctions against a State for failure to comply with the requirements of Title XI.

#### II. Analysis of Comments Received

The ASC received a total of 29 comments from individuals, States, and organizations, electronically as well as by mail, on its proposed Policy Statements. These comments may be viewed on the ASC's Web site under the **Federal Register Documents** tab of the Public Documents Library of Resources and Records.

<sup>6</sup> 12 U.S.C. 3332.

*Policy Statement 1: Statutes, Regulations, Policies and Procedures Governing State Programs.* The proposed Policy Statement addressed general issues such as a State's obligation to: Establish appropriate organizational structures for appraiser certification, licensing and supervision; ensure adequate funding and staffing to enable the State Program to meet its Title XI obligations; adopt relevant Appraiser Qualifications Board (AQB) *Real Property Appraiser Qualification Criteria* (AQB Criteria) for the various identified appraiser classifications and/or such additional qualification criteria provided it does not preclude compliance with AQB Criteria; adopt the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board (ASB) as minimum standards for covered appraisals; prohibit discrimination based on membership or lack thereof in a particular professional organization; ensure that State provisions exempting appraisers from meeting certification or licensing requirements do not permit exempted appraisers to perform appraisals for federally related transactions; and permit ASC staff to attend Board meetings.

Some Commenters expressed concern that ASC staff attendance at closed meetings and executive sessions of their Boards may expose Boards and their members to litigation and potential liability because of restrictions imposed by State laws. Concern also was expressed that staff attendance at closed meetings where legal advice was being given could result in a waiver of applicable privilege as well as potential violation of State privacy laws, while an additional commenter stated that the presence of ASC staff in closed Board meetings would hamper the free flow of information and discussion. The ASC recognizes these concerns and has amended the text in Policy Statement 1 to reflect the expectation that ASC staff would be permitted to attend open meetings, but not closed meetings or executive sessions. Further, the final Policy Statement notes that States are expected to make minutes of closed meetings and executive sessions available for review by ASC staff. The prohibition against discrimination contained in the proposed Policy Statement was considered by some Commenters as either too broad or without legal authority. The ASC has reconsidered this section and has deleted it from the Policy Statement since the prohibition against discrimination in Title XI applies to the

Federal financial institutions regulatory agencies.<sup>7</sup> One Commenter stated that the proposed removal of the requirement that a State must ensure that adequate safeguards exist to preserve the independence of the appraiser regulatory function if co-located within a department regulating realty related activities would remove ongoing guidance to the States about the acceptability of such co-location. The language as published in the proposed Policy Statement is consistent with ASC authority pursuant to Title XI. The ASC believes that the proposal provided sufficient flexibility for States to organize the appraisal regulatory function as they deem appropriate while encouraging States to ensure that conflicts of interest are avoided and that highest ethical standards are maintained. Therefore, this language was retained in the final Policy Statement. Some Commenters addressed the proposed deletion from Policy Statement 2, *Temporary Practice*, of the provision dealing with appraisal review. Although these comments are considered more completely in the discussion of Policy Statement 2, language was added to Policy Statement 1 addressing appraisal review and applicable rules of the Federal financial institutions regulatory agencies. These rules define "appraisal" and identify which federally-related transactions require the use of a licensed or certified appraiser. Under these rules, an appraisal review which does not include the reviewer providing his or her own opinion of value would not constitute an appraisal. This is consistent with Advisory Opinion 20 issued by the Appraisal Standards Board which provides that an appraisal review assignment that does not include the review appraiser's own opinion of value would not constitute an "appraisal" under USPAP.

*Policy Statement 2: Temporary Practice.* The proposed Policy Statement addressed what the ASC considered to be excessive fees or burdensome requirements to an out-of-State credentialed appraiser's ability to work in a State on a temporary basis. Burdensome requirements are specified separately for the "Home State agency" and the "Host State."

One Commenter stated that the Policy Statement failed to address the number of assignments covered by a temporary practice permit. The proposed Policy Statement set forth minimum

requirements, consistent with Title XI, for temporary practice, and noted that individual States have the authority to adopt more stringent requirements so long as such requirements do not violate the standards in Title XI. In response to this comment, the ASC has deleted the language on any limits to the number of times an appraiser may request a temporary practice permit and acknowledges that States have the right to determine such limits.

One Commenter suggested that the ASC needs to clarify that appraisals performed under temporary practice permits are subject to USPAP and that a requirement for geographic competency be included in them. The ASC believes that additional guidance is unnecessary since appraisals performed under temporary practice permits for federally related transactions must be performed in compliance with USPAP, which addresses an appraiser's geographic competency. Therefore, the ASC has decided to not revise the language.

The following language in existing Policy Statement 5 concerning "technical review" was recommended for omission in the proposal as outdated and unnecessary:

Finally, some State agencies have sought to require that an appraiser register for temporary practice if the appraiser is certified or licensed in another State, performs a technical review of an appraisal in that other State and changes, or is authorized to change, a value in the appraisal. The ASC, however, has concluded that for federally related transactions the review appraiser need not register for temporary practice or otherwise be subjected to the regulatory jurisdiction of the State agency in which the appraisal was performed, so long as the review appraiser does not perform the technical review in the State within which the property is located.

The majority of Commenters who addressed this issue, including one of the largest mortgage lenders in the country, objected to the removal of the language and noted that the existing temporary practice Policy Statement provided clarity on the credentialing requirements for appraisers conducting appraisal review. The Commenters objecting to the proposed change stated that it would result in States being permitted to require temporary practice permits for appraisers conducting appraisal reviews as part of a lender's credit due diligence process, and could increase the cost and time to approve a loan without a corresponding benefit to a potential borrower.

The basic premise of temporary practice has always encompassed an appraiser physically entering another

<sup>7</sup> The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration.

State pursuant to a temporary practice permit to carry out an assignment for a federally related transaction. This long-standing interpretation of temporary practice leads to the conclusion that a review appraiser, regardless of the type of review conducted, is not acting within the scope of temporary practice if the activity is conducted outside of the State where the subject property is located. Any further assertion by a State of jurisdiction over an appraiser outside of its State does not fall within the purview of temporary practice or Title XI. Title XI § 1110 provides, however, that the Federal financial institutions regulatory agencies shall prescribe appropriate standards for the performance of appraisals in connection with federally related transactions, and require that such appraisals be subject to appropriate review for compliance with USPAP. Therefore, rather than address this as a temporary practice issue, Section F (*Appraisal Standards*) in final Policy Statement 1 has been revised to include a discussion of the applicable rules of the Federal financial institutions regulatory agencies.

*Policy Statement 3: National Registry.* The proposed Policy Statement addressed several Dodd-Frank Act amendments to Title XI concerning appraiser classifications and States' ASC National Registry reporting requirements. The proposal included a discussion on the ASC National Registry's extranet application and security requirements as well as requiring States to notify the ASC as soon as practicable if it is determined that a credential holder listed on the National Registry did not qualify for the credential held or in the event of voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice. As discussed in the proposal, States would be required to submit all "disciplinary actions" (as defined in the proposed Policy Statement) for inclusion on the National Registry via the extranet application as of July 1, 2013.

Six Commenters addressed various aspects of this proposed Policy Statement. One Commenter suggested that the ASC collate Registry data to provide a centralized data repository so that States would not be required to establish routine communications with each other concerning appraiser credentials. One Commenter suggested that States be prohibited from reporting appraisal standard or ethical violations until the accused has exhausted all available appeals since immediate reporting may cause unwarranted harm to an appraiser where charges are minor

or unfounded. Another Commenter expressed concern that States were not reporting promptly and suggested that specific processes and timelines be developed to maximize the benefits of the Registry. The language in the proposed Policy Statement is consistent with the mandates of Title XI and strikes an appropriate balance with the States' regulatory authority concerning the application of their individual disciplinary and administrative processes.

*Policy Statement 4: Application Process.* The proposed Policy Statement addressed the requirements applicable to a State Program's application processes under Title XI, including general processing of applications for appraiser credentials, qualifying education, continuing education, experience requirements, and examination.

Three of the five Commenters addressing this proposed Policy Statement stated that the 90-day period for processing applications should be removed or extended. They stated that this period was inadequate under their established application processing procedures. One Commenter noted that they relied on volunteer appraisers for conducting required experience reviews to release staff for investigations. One Commenter suggested that the ASC could specify a time when an application would be deemed complete. The ASC notes that the 90-day application process period in the proposal is a recommended time frame, and is based on extensive experience gained from the ASC reviews of State Programs. The ASC will consider a longer application process when a State can demonstrate that it has sound reasons for its application process taking longer than 90 days. Therefore, the ASC is retaining the proposed language in the final policy and notes that establishing further parameters for processing of applications is a matter appropriately left for the States. The ASC will consider during a State review whether a State's application process is unreasonable or results in inappropriate delay.

Several Commenters noted difficulty with the requirement that States must verify that the qualifying/continuing education claimed by an appraiser is acceptable under AQB Criteria and consistent with the credential sought. These Commenters stated that for in-state classes or classes given by a national provider, the verification would be relatively simple, but verification of education provided out-of-state is more difficult absent a central data base. The ASC believes that it is the

role of the States to approve courses for both qualifying and continuing education and, therefore, the ASC does not believe that it has the authority to establish a national database of approved courses given the varied approval standards and the ability of States to require standards higher than prescribed by the AQB. The final Policy Statement therefore does not include establishment of a national database of approved courses.

Another Commenter suggested that, absent documented abuse, States should be permitted to accept affidavits or certifications for upgrades and renewals. The ASC notes that Title XI provides the minimum requirements applicable to appraisers performing appraisals for federally related transactions, including meeting minimum criteria established by the AQB, with enforcement of those AQB Criteria being the province of the States, subject to monitoring by the ASC. Therefore, the ASC believes that the use of affidavits in support of applications and upgrades is inconsistent with the purpose of Title XI. The final Policy Statement retains the prohibition on the use of affidavits to demonstrate meeting AQB Criteria in certain circumstances.

*Policy Statement 5: Reciprocity.* The proposed Policy Statement addressed reciprocity policies consistent with Title XI. The Dodd-Frank act amended the Title XI provision on reciprocity to require that in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must, at a minimum, have a reciprocity policy in place that meets the Dodd-Frank Act. Such a policy requires issuance of a reciprocal credential if: (1) The appraiser is coming from a State that is "in compliance;" (2) the appraiser holds a valid credential from that State; and (3) the credentialing requirements of that State (as they currently exist) meet or exceed those of the reciprocal credentialing State (as they currently exist). A State may have a more lenient or more open door policy; however, States cannot impose additional impediments to issuance of reciprocal credentials.

Several Commenters opined that it was an unreasonable burden on the State where a reciprocal credential was being sought (Reciprocal State) to be required to determine if the credentialing requirements of the applicant's home State (Home State) meet or exceed its own credentialing requirements since some States may not have the expertise or resources to make such determinations. One Commenter suggested that the ASC make such

determinations on request. Several Commenters also noted that the “meet or exceeds” standard for credentialing requirements presents opportunities for States to adjust their credentialing requirements which then would serve as a basis for denying reciprocal applications. Support also was expressed for a strong national standard with one Commenter suggesting that reciprocal licenses could be issued solely on the basis that the Home State credential was in good standing and the Home State was “in compliance.” The ASC notes that Title XI does not authorize the establishment of a national standard based solely on whether an applicant’s credential is in good standing in a Home State that is “in compliance.” The final Policy Statement does not adopt a national standard as suggested.

*Policy Statement 6: Education.* The proposed Policy Statement addressed specific requirements regarding course approval, including the approval of distance education courses (e.g., on-line courses), and referred to discussion in proposed Policy Statement 4 concerning qualifying and continuing education in the application process. As required by the Dodd-Frank Act, the ASC included language in the proposal to encourage States to accept courses approved by the AQB’s Course Approval Program.

One Commenter opined that the ASC lacked legal authority to prohibit States from specifying a particular course provider in resolution of a disciplinary matter where there are multiple authorized providers of the same course/material in that State. The final Policy Statement has been revised to discourage States from treating one education provider more favorably than another equally qualified education provider.

*Policy Statement 7: State Agency Enforcement.* The proposed Policy Statement addressed specific requirements for an effective and compliant enforcement program. The proposal addressed: (1) Timeliness of complaint investigations and initiating enforcement action; (2) effectiveness of a State’s enforcement process; (3) consistent and equitable treatment of an appraiser in the State’s enforcement process; and (4) appropriate complaint documentation in a State’s enforcement records, including specific requirements for tracking complaints of alleged appraiser misconduct or wrongdoing using an electronic complaint log.

A number of Commenters expressed concern that the proposed requirement to maintain complaint logs in an electronic sortable spreadsheet format would be expensive and time-

consuming to implement with limited benefit. The ASC recognizes these concerns and has amended the language in the final Policy Statement to strongly encourage maintenance of complaint logs in such format. Further, in the final Policy Statement, the ASC sets forth the expectation that States will document that persons analyzing complaints for compliance with USPAP are knowledgeable about the appraisal process and USPAP.

The majority of the 17 Commenters addressing this proposed Policy Statement stated that the 12-month time period for complaint resolution was not realistic and unduly burdensome. Most of these Commenters noted that at various stages of investigation and discipline there are a number of instances when a State appraiser regulatory agency no longer has control of the process and, therefore, cannot affect the speed with which the process works, and that sanctioning a State Program for something beyond its control is unfair. Commenters provided a range of suggestions from establishing separate investigation and discipline tracks to extending the time period for complaint resolution from one year to two years or a “timely” period. The ASC notes that Title XI requires complaints to be processed and investigated in a reasonable time period. Nevertheless, the ASC recognizes the concerns expressed by these Commenters. Therefore, the ASC has included more specific language in the final Policy Statement clarifying that special documented circumstances such as the referral of a complaint to another agency for review or action may be a reason for a delay in complaint resolution. In those circumstances, the final Policy Statement notes that the ASC expects a State to document the dates and reasons for the referral.

Several Commenters expressed concern about excluding statutes of limitation as a basis for closing a complaint without completing an investigation of that complaint. In their view, this prohibition would create problems with record retention and other matters. One Commenter suggested application of the 10-year statute of limitations in 12 U.S.C. 1833a. The ASC notes that statutes of limitation vary widely among the States, not only in length but in the triggering event of the underlying transaction. Consequently, in some States the statute of limitations may expire before a complainant has a reasonable period of time to file a complaint. Moreover, a standard rule permitting the closure of investigations/complaints on the basis of statutes of limitations would be

inconsistent with the requirements of Title XI. Therefore, the ASC has retained language that closing a complaint based on a statute of limitations is inconsistent with the Title XI requirement that States assure effective supervision of the activities of credentialed appraisers.

*Policy Statement 8: Interim Sanctions.* The proposed Policy Statement addressed due process procedures that would provide a State with an opportunity to be heard or to correct conditions before the ASC imposes an interim sanction. Pursuant to the Dodd-Frank Act, the ASC has the authority to impose interim actions and suspensions against a State agency as an alternative to or in advance of a non-recognition proceeding against a State agency that fails to have an effective Program.<sup>8</sup> The Dodd-Frank Act’s interim sanction authority specifically authorizes the ASC to remove a State licensed or certified appraiser from the National Registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, or disciplinary proceedings.

Several Commenters suggested that the factors involved in analysis as well as mitigating or aggravating circumstances be identified and explained and that options for interim sanctions be identified also. Other Commenters expressed concern about removal of appraisers from the National Registry because of a State Program’s failures and request clarification of that issue. One Commenter noted that removal in those circumstances may raise serious constitutional concerns. The ASC has addressed these comments in the final Policy Statement by clarifying the procedures set forth in Policy Statement 8, sections B and C, to address instances when action is being taken against a State Program/agency as an alternative to, or in advance of, a non-recognition proceeding.

The ASC believes the final Policy Statement is consistent with the requirements of Title XI. In this regard, the ASC notes that if a State Program is sanctioned for non-compliance with Title XI through a suspension of the State Program, or a portion thereof, appraisers credentialed by that State relative to the portion of the State Program being sanctioned may not be eligible to appraise for federally related transactions.

#### **Appendix A: Compliance Review Process**

The proposal contained a new rating system to provide greater gradation in

<sup>8</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

the State compliance Findings and the time frame for the Review Cycle. As proposed, a State receiving an "Excellent" rating would be on a 2-year Review Cycle, as would a State receiving a rating of "Good" or "Needs Improvement." A State receiving a "Needs Improvement" rating would, however, be subject to appropriate additional monitoring. One commenter stated that the Review Cycle provided little incentive for a State to achieve an "Excellent" rating and suggested that an increase in the period between full Compliance Reviews may be a suitable response to the State's efforts to achieve that rating. The ASC notes that there is some potential value in this approach to extend the Review Cycle by reducing the burden of onsite Compliance Reviews on States with an "Excellent" rating. However, the ASC believes that additional experience is needed with this new rating system before extending the Review Cycle beyond two years. Therefore, the ASC is adopting the Compliance Review process and rating system as proposed and acknowledges that future refinements may be necessary.

#### **Proposed Appendix B: Summary of Requirements**

The proposed Appendix B provided a summary of requirements for each Policy Statement to aid States in compliance with the Title XI. Several Commenters suggested that this discussion was helpful and should be incorporated into the applicable Policy Statement. The ASC agrees with the Commenters and has eliminated the Appendix and moved the requirements to the applicable location in the final Policy Statements.

#### **Final Appendix B (Proposed Appendix C): Glossary of Terms**

In response to Commenters request for clarity on several terms, the ASC made minor changes to the text in the final appendix. In particular, the discussion on "special documented circumstances" has been incorporated into final Policy Statement 7 and deleted from this appendix. Several editorial changes have been made to clarify ambiguities in definitions.

#### **Proposed Appendix D: ASC Bulletins and Supplements**

The relevant guidance provided in the ASC Bulletins and Supplements referenced in the Proposed Appendix has been incorporated into appropriate Policy Statements. The ASC consequently has deleted Proposed Appendix D.

For the reasons discussed in the preamble, the ASC adopts the revised Policy Statements as follows:

#### **Introduction and Purpose**

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (Title XI), established the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).

<sup>1</sup>The purpose of Title XI is to provide protection of Federal financial and public policy interests by upholding Title XI requirements for appraisals performed for federally related transactions. Specifically those appraisals shall be performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

Pursuant to Title XI, one of the ASC's core functions is to monitor the requirements established by the States<sup>2</sup> for certification and licensing of appraisers qualified to perform appraisals in connection with federally related transactions.<sup>3</sup> The ASC performs periodic Compliance Reviews<sup>4</sup> of each State appraiser regulatory program (Program) to determine compliance, or lack thereof, with Title XI, and to assess the Program's implementation of the AQB Criteria as adopted by the Appraiser Qualifications Board (AQB).

Pursuant to authority granted to the ASC under Title XI, the ASC is issuing these Policy Statements<sup>5</sup> to provide States with the necessary information to maintain their Programs in compliance with Title XI. Policy Statements 1 through 7 correspond with the categories that are evaluated during the Compliance Review process and included in the ASC Compliance Review Report (Report). Policy Statement 8 entitled *Interim Sanctions* sets forth required procedures in the

<sup>1</sup> The ASC board is made up of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration). The other two members are designated by the heads of the Department of Housing and Urban Development and the Federal Housing Finance Agency.

<sup>2</sup> See Appendix B, Glossary of Terms, for the definition of "State."

<sup>3</sup> See Appendix B, Glossary of Terms, for the definition of "federally related transaction."

<sup>4</sup> See Appendix A, Compliance Review Process.

<sup>5</sup> These Policy Statements, adopted April 10, 2013, supersede all previous Policy Statements adopted by the ASC, the most recent version of which was issued in October 2008.

event that interim sanctions are imposed against a State by the ASC.

#### **Policy Statement 1**

##### *Statutes, Regulations, Policies and Procedures Governing State Programs*

##### **A. State Regulatory Structure**

Title XI requires the ASC to monitor each State appraiser certifying and licensing agency for the purpose of determining whether each such agency has in place policies, practices and procedures consistent with the requirements of Title XI.<sup>6</sup> The ASC recognizes that each State may have legal, fiscal, regulatory or other factors that may influence the structure and organization of its Program. Therefore, a State has flexibility to structure its Program so long as it meets its Title XI-related responsibilities.

States should maintain an organizational structure for appraiser certification, licensing and supervision that avoids conflicts of interest. A State agency may be headed by a board, commission or an individual. State board<sup>7</sup> or commission members, or employees in policy or decision-making positions, should understand and adhere to State statutes and regulations governing performance of responsibilities consistent with the highest ethical standards for public service. In addition, Programs using private entities or contractors should establish appropriate internal policies, procedures, and safeguards to promote compliance with the State agency's responsibilities under Title XI and these Policy Statements.

##### **B. Funding and Staffing**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended Title XI to require the ASC to determine whether States have sufficient funding and staffing to meet their Title XI requirements. Compliance with this provision requires that a State must provide its Program with funding and staffing sufficient to carry out its Title XI-related duties. The ASC evaluates the sufficiency of funding and staffing as part of its review of all aspects of a Program's effectiveness, including the adequacy of State boards, committees, or commissions responsible for carrying out Title XI-related duties.

##### **C. Minimum Criteria**

Title XI requires States to adopt and/or implement all relevant AQB Criteria.

<sup>6</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>7</sup> See Appendix B, *Glossary of Terms*, for the definition of "State board."

Historically, requirements established by a State for certified residential or certified general classifications have been required to meet or exceed AQB Criteria. Effective July 1, 2013, requirements established by a State for licensed appraisers, as well as for trainee and supervisory appraisers, must also meet or exceed the AQB Criteria, as required by the Dodd-Frank Act.

#### D. Federally Recognized Appraiser Classifications

##### 1. State Certified Appraisers

“State certified appraisers” means those individuals who have satisfied the requirements for residential or general certification in a State whose criteria for certification meet or exceed the applicable minimum AQB Criteria. Permitted scope of practice and designation for State certified residential or certified general appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

##### 2. State Licensed Appraisers

As of July 1, 2013, “State licensed appraisers” means those individuals who have satisfied the requirements for licensing in a State whose criteria for licensing meet or exceed the applicable minimum AQB Criteria. Effective July 1, 2013, the permitted scope of practice and designation for State licensed appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

##### 3. Trainee Appraiser and Supervisory Appraiser

As of July 1, 2013, any minimum qualification requirements established by a State for individuals in the position of “trainee appraiser” and “supervisory appraiser” must meet or exceed the applicable minimum AQB Criteria. ASC staff will evaluate State designations such as “registered appraiser,” “apprentice appraiser,” “provisional appraiser,” or any other similar designation to determine if, in substance, such designation is consistent with a “trainee appraiser” designation and, therefore, administered to comply with Title XI. Effective July 1, 2013, the permitted scope of practice and designation for trainee appraisers and supervisory appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

Any State or Federal agency may impose additional appraiser qualification requirements for State licensed, certified residential or certified general classifications or for trainee and supervisor classifications, if

they consider such requirements necessary to carry out their responsibilities under Federal and/or State statutes and regulations, so long as the additional qualification requirements do not preclude compliance with AQB Criteria.

#### E. Non-Federally Recognized Credentials

States using non-federally recognized credentials or designations<sup>8</sup> must ensure that they are easily distinguished from the federally recognized credentials.

#### F. Appraisal Standards

Title XI and the Federal financial institutions regulatory agencies’ regulations mandate that all appraisals performed in connection with federally related transactions be in written form, prepared in accordance with generally accepted appraisal standards as promulgated by the Appraisal Standards Board (ASB) in the Uniform Standards of Professional Appraisal Practice (USPAP), and be subject to appropriate review for compliance with USPAP.<sup>9</sup> States that have incorporated USPAP into State law should ensure that statutes or regulations are updated timely to adopt the latest version of USPAP, or if State law allows, automatically incorporate the latest version of USPAP. States should consider ASB Advisory Opinions, Frequently Asked Questions, and other written guidance issued by the ASB regarding interpretation and application of USPAP.

Any State or Federal agency may impose additional appraisal standards if they consider such standards necessary to carry out their responsibilities, so long as additional appraisal standards do not preclude compliance with USPAP or the Federal financial institutions regulatory agencies’ appraisal regulations for work performed for federally related transactions.

The Federal financial institutions regulatory agencies’ appraisal regulations define “appraisal” and identify which real estate-related financial transactions require the services of a state certified or licensed appraiser. These regulations define “appraisal” as a “written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an

adequately described property as of a specific date(s) supported by the presentation and analysis of relevant market information.” Per these regulations, an appraiser performing an appraisal review which includes the reviewer providing his or her own opinion of value constitutes an appraisal. Under these same regulations, an appraisal review that does not include the reviewer providing his or her own opinion of value does not constitute an appraisal. Therefore, under the Federal financial institutions regulatory agencies’ regulations, only those transactions that involve appraisals for federally related transactions require the services of a state certified or licensed appraiser.

#### H. Exemptions

Title XI and the Federal financial institutions regulatory agencies’ regulations specifically require the use of only State certified or licensed appraisers in connection with the appraisal of certain real estate-related financial transactions.<sup>10</sup> A State may not exempt any individual or group of individuals from meeting the State’s certification or licensing requirements if the individual or group member performs an appraisal when Federal statutes and regulations require the use of a certified or licensed appraiser. For example, an individual who has been exempted by the State from its appraiser certification or licensing requirements because he or she is an officer, director, employee or agent of a federally regulated financial institution would not be permitted to perform an appraisal in connection with a federally related transaction.

#### I. ASC Staff Attendance at State Board Meetings

ASC staff regularly attends open State board meetings as part of the on-site Compliance Review process. States are expected to make available for review by ASC staff minutes of closed meetings and executive sessions. The efficacy of the ASC’s Compliance Review process rests on the ASC’s ability to obtain reliable information about all areas of a State’s Program. States are encouraged to allow ASC staff to attend closed and executive sessions of State board meetings where such attendance would not violate State law or regulation or be inconsistent with other legal obligations of the State board. ASC staff is obligated to protect information obtained during the Compliance Review process

<sup>8</sup> See Appendix B, *Glossary of Terms*, for the definition of “non-federally recognized credentials or designations.”

<sup>9</sup> See Appendix B, *Glossary of Terms*, for the definition of “Uniform Standards of Professional Appraisal Practice.”

<sup>10</sup> Title XI § 1112, 12 U.S.C. 3341; Title XI § 1113, 12 U.S.C. 3342; Title XI § 1114, 12 U.S.C. 3343.

concerning the privacy of individuals and any confidential matters.

#### J. Summary of Requirements

1. States must require that appraisals be performed in accordance with the latest version of USPAP.<sup>11</sup>
2. States must, at a minimum, adopt and/or implement all relevant AQB Criteria.<sup>12</sup>
3. States must have policies, practices and procedures consistent with Title XI.<sup>13</sup>
4. States must have funding and staffing sufficient to carry out their Title XI-related duties.<sup>14</sup>
5. States must use proper designations and permitted scope of practice for certified residential or certified general classifications, and as of July 1, 2013, a State must use the proper designations and permitted scope of practice for the licensed classification, and trainee and supervisor classifications.<sup>15</sup>
6. State board members, and any persons in policy or decision-making positions, must perform their responsibilities consistent with Title XI.<sup>16</sup>
7. States' certification and licensing requirements must meet the minimum requirements set forth in Title XI.<sup>17</sup>
8. State agencies must be granted adequate authority by the State to maintain an effective regulatory Program in compliance with Title XI.<sup>18</sup>

#### Policy Statement 2

##### *Temporary Practice*

#### A. Requirement for Temporary Practice

Title XI requires State agencies to recognize, on a temporary basis, the certification or license of an out-of-State appraiser entering the State for the purpose of completing an appraisal assignment<sup>19</sup> for a federally related transaction. The out-of-State appraiser must register with the State agency in the State of temporary practice (Host State). A State may determine the process necessary for "registration" provided such process complies with Title XI and is not "burdensome" as

<sup>11</sup> Title XI § 1101, 12 U.S.C. 3331; Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>12</sup> Title XI §§ 1116(a), (c) and (e), 12 U.S.C. 3345; Title XI § 1118(a), 12 U.S.C. 3347.

<sup>13</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>14</sup> *Id.*; Title XI § 1118(b), 12 U.S.C. 3347.

<sup>15</sup> Title XI §§ 1116(a), (c) and (e), 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; Title XI § 1113, 12 U.S.C. 3342; AQB *Real Property Appraiser Qualification Criteria*.

<sup>16</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>17</sup> Title XI §§ 1116(a), (c) and (e), 12 U.S.C. 3345.

<sup>18</sup> Title XI § 1118(b), 12 U.S.C. 3347.

<sup>19</sup> See Appendix B, *Glossary of Terms*, for the definition of "assignment."

determined by the ASC or involve excessive fees. Thus, a credentialed appraiser<sup>20</sup> from State A has a statutory right to enter State B (the Host State) to perform an assignment concerning a federally related transaction, so long as the appraiser registers with the State agency in State B prior to performing the assignment. Though Title XI contemplates reasonably free movement of credentialed appraisers across State lines, an out-of-State appraiser must comply with the Host State's real estate appraisal statutes and regulations and is subject to the Host State's full regulatory jurisdiction. States should utilize the National Registry to verify credential status on applicants for temporary practice.

#### B. Excessive Fees or Burdensome Requirements

Title XI prohibits States from imposing excessive fees or burdensome requirements, as determined by the ASC, for temporary practice.<sup>21</sup> Adherence by State agencies to the following mandates and prohibitions will deter the imposition of excessive fees or burdensome requirements.

1. Host State agencies must:
  - a. Issue temporary practice permits on an assignment basis;
  - b. issue temporary practice permits within five business days of receipt of a completed application, or notify the applicant and document the file as to the circumstances justifying delay or other action;
  - c. issue temporary practice permits designating the actual date of issuance;
  - d. Take regulatory responsibility for a temporary practitioner's unethical, incompetent and/or fraudulent practices performed while in the State;
  - e. notify the appraiser's home State agency<sup>22</sup> in the case of disciplinary action concerning a temporary practitioner; and
  - f. allow at least one temporary practice permit extension through a streamlined process.
2. Host State agencies may not:
  - a. Limit the valid time period of a temporary practice permit to less than 6 months, except in the case of an appraiser not holding a credential in active status for at least that period of time;
  - b. Limit an appraiser to one temporary practice permit per calendar year;<sup>23</sup>

<sup>20</sup> See Appendix B, *Glossary of Terms*, for the definition of "credentialed appraisers."

<sup>21</sup> Title XI § 1122 (a) (2), 12 U.S.C. 3351.

<sup>22</sup> See Appendix B, *Glossary of Terms*, for the definition of "home State agency."

<sup>23</sup> State agencies may establish by statute or regulation a policy that places reasonable limits on the number of times an out-of-State certified or

c. charge a temporary practice permit fee exceeding \$250, including one extension fee;

- d. impose State appraiser qualification requirements upon temporary practitioners that exceed AQB Criteria for the credential held;
  - e. require temporary practitioners to obtain a certification or license in the State of temporary practice;
  - f. require temporary practitioners to affiliate with an in-State licensed or certified appraiser;
  - g. refuse to register licensed or certified appraisers seeking temporary practice in a State that does not have a licensed or certified level credential; or
  - h. prohibit temporary practice.
3. Home State agencies may not:
- a. Delay the issuance of a written "letter of good standing" or similar document for more than five business days after receipt of a request; or
  - b. fail to take disciplinary action, if appropriate, when one of its certified or licensed appraisers is disciplined by another State agency for unethical, incompetent or fraudulent practices under a temporary practice permit.

#### C. Summary of Requirements

1. States must recognize, on a temporary basis, appraiser credentials issued by another State if the property to be appraised is part of a federally related transaction.<sup>24</sup>
2. State agencies must adhere to mandates and prohibitions as determined by the ASC that deter the imposition of excessive fees or burdensome requirements for temporary practice.<sup>25</sup>

#### Policy Statement 3

##### *National Registry*

#### A. Requirements for the National Registry

Title XI requires the ASC to maintain a National Registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions.<sup>26</sup> Title XI further requires the States to transmit to the ASC: (1) A roster listing individuals who have received a State certification or license in accordance with Title XI; (2) reports on the issuance and renewal of licenses

licensed appraiser may exercise his or her temporary practice rights in a given year. If such a policy is not established, a State agency may choose not to honor an out-of-State certified or licensed appraiser's temporary practice rights if it has made a determination that the appraiser is abusing his or her temporary practice rights and is regularly engaging in real estate appraisal services within the State.

<sup>24</sup> Title XI § 1122(a) (1), 12 U.S.C. 3351.

<sup>25</sup> Title XI § 1122(a) (2), 12 U.S.C. 3351.

<sup>26</sup> Title XI § 1103(a) (3), 12 U.S.C. 3332.

and certifications, sanctions, disciplinary actions, revocations and suspensions; and (3) the Registry fee as set by the ASC<sup>27</sup> from individuals who have received certification or licensing. States must notify the ASC as soon as practicable if a credential holder listed on the National Registry does not qualify for the credential held.

Roster and Registry fee requirements apply to all individuals who receive State certifications or licenses, originally or by reciprocity, whether or not the individuals are, in fact, performing or planning to perform appraisals in federally related transactions. If an appraiser is certified or licensed in more than one State, the appraiser is required to be on each State's roster of certified or licensed appraisers, and a Registry fee is due from each State in which the appraiser is certified or licensed.

Only AQB-compliant certified and, effective July 1, 2013, AQB-compliant licensed appraisers in active status on the National Registry are eligible to perform appraisals in connection with federally related transactions.

Some States may give State certified or licensed appraisers an option to not pay the Registry fee. If a State certified or licensed appraiser chooses not to pay the Registry fee, then the Program must ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals in connection with non-federally related transactions.<sup>28</sup> The Program must place a conspicuous notice directly on the face of any evidence of the appraiser's authority to appraise stating, "Not Eligible To Appraise Federally Related Transactions," and the appraiser must not be listed in active status on the National Registry.

The ASC extranet application allows States to update their appraiser credential information directly to the National Registry. Only Authorized Registry Officials are allowed to request access for their State personnel (see section C below). The ASC will issue a User Name and Password to the designated State personnel responsible for that State's National Registry entries. Designated State personnel are required to protect the right of access, and not share their User Name or Password with anyone. State agencies must adopt and

implement a written policy to protect the right of access, as well as the ASC issued User Name and Password. The ASC will provide detailed specifications regarding the data elements on the National Registry and reporting procedures to those States not using the ASC extranet application.<sup>29</sup> The ASC strongly encourages the States to utilize the extranet application as a more secure method of submitting information to the National Registry.

The ASC creates a unique National Registry number for each listed appraiser and protects each appraiser's privacy rights. This unique identifier is available to appropriate State and Federal regulatory agencies to simplify multi-State queries regarding specific appraisers.

#### B. Registry Fee and Invoicing Policies

Each State must remit to the ASC the annual Registry fee, as set by the ASC, for State certified or licensed appraisers within the State to be listed on the National Registry. Requests to prorate refunds or partial-year registrations will not be granted. If a State collects multiple-year fees for multiple-year certifications or licenses, the State may choose to remit to the ASC the total amount of the multiple-year Registry fees or the equivalent annual fee amount. The ASC will, however, record appraisers on the National Registry only for the number of years for which the ASC has received payment. Nonpayment by a State of an appraiser's National Registry fee may result in the status of that appraiser being listed as "inactive." When a State's failure to pay a past due invoice results in appraisers being listed as inactive, the ASC will not change those appraisers back to active status until payment is received from the State. An inactive status on the National Registry, for whatever the reason, renders an appraiser ineligible to perform appraisals in connection with federally related transactions.

#### C. Access to National Registry Data

The ASC Web site provides free access to the public portion of the National Registry at [www.asc.gov](http://www.asc.gov). The public portion of the National Registry data may be downloaded using predefined queries or user-customized applications.

Access to the full database, which includes non-public data (e.g., certain disciplinary action information), is restricted to authorized State and Federal regulatory agencies. States must

designate a senior official, such as an executive director, to serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the designated Authorized Registry Official. States should ensure that the authorization information provided to the ASC is updated and accurate.

#### D. Information Sharing

Information sharing (routine exchange of certain information among lenders, governmental entities, State agencies and the ASC) is essential for carrying out the purposes of Title XI. Title XI requires the ASC, any other Federal agency or instrumentality, or any federally recognized entity to report any action of a State certified or licensed appraiser that is contrary to the purposes of Title XI to the appropriate State agency for disposition. The ASC believes that full implementation of this Title XI requirement is vital to the integrity of the system of State appraiser regulation. States are encouraged to develop and maintain procedures for sharing of information among themselves.

The National Registry's value and usefulness are largely dependent on the quality and frequency of State data submissions. Accurate and frequent data submissions from all States are necessary to maintain an up-to-date National Registry. States must submit appraiser data in a secure format to the ASC at least monthly. If there are no changes to the data, the State agency must notify the ASC of that fact in writing. States are encouraged to submit data as frequently as possible.

State agencies must report as soon as practicable any disciplinary action<sup>30</sup> taken against an appraiser to the ASC. Prior to July 1, 2013, at a minimum, this information must be submitted with the State's monthly, or more frequent, Registry data submission. As of July 1, 2013, all States will be required to report disciplinary action via the extranet application. States not reporting via the extranet application will be required to provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement. For the most serious disciplinary actions (i.e., voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice), the State agency must notify the ASC of such action as soon as practicable, but no later than five (5) business days after the disciplinary

<sup>27</sup> Title XI § 1109, *Roster of State certified or licensed appraisers; authority to collect and transmit fees*, requires the ASC to consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. (Title XI § 1109(a), 12 U.S.C. 3338.)

<sup>28</sup> See Appendix B, *Glossary of Terms*, for the definition of "non-federally related transactions."

<sup>29</sup> See section D, *Information Sharing*, below requiring all States to report disciplinary action via the extranet application by July 1, 2013.

<sup>30</sup> See Appendix B, *Glossary of Terms*, for the definition of "disciplinary action."

action is final, in order for the appraiser's status to be changed on the National Registry to "inactive," thereby making the appraiser ineligible to perform appraisals for federally related transactions or other transactions requiring the use of State certified or licensed appraisers.

Title XI also contemplates the reasonably free movement of certified and licensed appraisers across State lines. This freedom of movement assumes, however, that certified and licensed appraisers are, in all cases, held accountable and responsible for their actions while performing appraisal activities.

#### E. Summary of Requirements

1. States must reconcile and pay National Registry invoices in a timely manner.<sup>31</sup>

2. States must submit all disciplinary actions to the ASC for inclusion on the National Registry.<sup>32</sup>

3. As of July 1, 2013, all States will be required to report disciplinary action via the extranet application as soon as practicable.<sup>33</sup>

4. States must designate a senior official, such as an executive director, who will serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the selected Authorized Registry Official, and any individual(s) authorized to act on their behalf.<sup>34</sup> (States should ensure that the authorization information provided to the ASC is kept current.)

5. States using the ASC extranet application must implement written policies to ensure that all personnel with access to the National Registry protect the right of access and not share the User Name or Password with anyone.<sup>35</sup>

6. States must ensure the accuracy of all data submitted to the National Registry.<sup>36</sup>

7. States must submit appraiser data to the ASC at least monthly. If a State's data does not change during the month, the State agency must notify the ASC of that fact in writing.<sup>37</sup>

8. States must notify the ASC as soon as practicable of voluntary surrenders, suspensions, revocations, or any other action that interrupts a credential holder's ability to practice.<sup>38</sup>

9. If a State certified or licensed appraiser chooses not to pay the Registry fee, the State must ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals only in connection with non-federally related transactions.<sup>39</sup>

#### Policy Statement 4

##### Application Process

AQB Criteria sets forth the minimum education, experience and examination requirements applicable to all States for credentialing of real property appraisers. In the application process, States must, at a minimum, employ a reliable means of validating both education and experience credit claimed by applicants for credentialing.<sup>40</sup>

##### A. Processing of Applications

States must process applications in a consistent, equitable and well-documented manner. Applications for credentialing should be timely processed by State agencies (within 90 days). Any delay in the processing of applications should be sufficiently documented in the file to explain the delay. States must ensure appraiser credential applications submitted for processing do not contain expired examinations as established by AQB Criteria.

##### B. Qualifying Education for Initial or Upgrade Applications

States must verify that:

(1) The applicant's claimed education courses are acceptable under AQB Criteria; and

(2) the applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought.

Documentation must be provided to support education claimed by applicants for initial credentialing or upgrade. States may not accept an affidavit for education claimed from applicants for certification. Effective July 1, 2013, States may not accept an affidavit for education claimed from applicants for any federally recognized credential.<sup>41</sup> States must maintain

<sup>39</sup> *Id.*

<sup>40</sup> Includes applications for credentialing of State licensed, certified residential or certified general classifications, and trainee and supervisor classifications.

<sup>41</sup> If a State accepts education-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require documentation to support the appraiser's educational qualification for the

adequate documentation to support verification of education claimed by applicants.

#### C. Continuing Education for Reinstatement and Renewal Applications

##### 1. Reinstatement Applications

States must verify that:

(1) The applicant's claimed continuing education courses are acceptable under AQB Criteria; and

(2) the applicant has successfully completed all continuing education consistent with AQB Criteria for reinstatement of the appraiser credential sought.

Documentation must be provided to support continuing education claimed by applicants for reinstatement. States may not accept an affidavit for continuing education claimed from applicants for reinstatement. States must maintain adequate documentation to support verification of claimed education.

##### 2. Renewal Applications

States must ensure that continuing education courses for renewal of an appraiser credential are consistent with AQB Criteria and that continuing education hours required for renewal of an appraiser credential were completed consistent with AQB Criteria. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure that adheres to the following objectives and requirements:

*a. Validation objectives*—The State's validation procedures must be structured to permit acceptable projections of the sample results to the entire population of subject appraisers. Therefore, the sample must include an adequate number of affidavits to have a reasonable chance of identifying appraisers who fail to comply with AQB Criteria, and the sample must include a statistically relevant representation of the appraiser population being sampled.

*b. Minimum Standards*—The following minimum standards apply to these audits:

(1) Validation must include a prompt post-approval audit. Each audit of an affidavit for continuing education credit claimed must be completed within 60 days from the date the renewed credential is issued;

(2) States must audit the continuing education-related affidavit for each

certified classification, not just the incremental amount of education required to move from the non-certified to the certified classification. This requirement applies to all federally recognized credentials effective July 1, 2013.

<sup>31</sup> Title XI § 1118 (a), 12 U.S.C. 3347; Title XI § 1109(a), 12 U.S.C. 3338.

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

<sup>33</sup> *Id.*

<sup>34</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>35</sup> *Id.*

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

<sup>37</sup> *Id.*

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

credentialed appraiser selected in the sampling procedure;

(3) The State must determine that the education courses claimed conform to AQB Criteria and that the appraiser successfully completed each course;

(4) When a State determines that an appraiser's continuing education does not meet AQB Criteria, the State must take appropriate action to suspend the appraiser's eligibility to perform appraisals in federally related transactions until such time that the requisite continuing education has been completed. The State must notify the ASC as soon as practicable after taking such action in order for the appraiser's record on the National Registry to be updated appropriately; and

(5) If more than ten percent of the audited appraisers fail to meet the AQB Criteria, the State must take remedial action<sup>42</sup> to address the apparent weakness of its affidavit process. The ASC will determine on a case-by-case basis whether remedial actions are effective and acceptable.

*c. Documentation*—States must maintain adequate documentation to support its affidavit renewal and audit procedures and actions.

*d. List of Education Courses*—To promote accountability, the ASC encourages States accepting affidavits for continuing education credit claimed for credential renewal to require that the appraiser provide a list of courses to support the affidavit.

#### D. Experience for Initial or Upgrade Applications

States must ensure that appraiser experience logs conform to AQB Criteria. States may not accept an affidavit for experience credit claimed by applicants for certification. Effective July 1, 2013, States may not accept an affidavit for experience credit claimed by applicants for any federally recognized credential.<sup>43</sup>

<sup>42</sup> For example:

(1) A State may conduct an additional audit using a higher percentage of audited appraisers; or

(2) a State may publically post action taken to sanction non-compliant appraisers to increase awareness in the appraiser community of the importance of compliance with continuing education requirements.

<sup>43</sup> See Appendix B, *Glossary of Terms*, for the definition of "federally recognized credential." If prior to July 1, 2013, a State accepted experience-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require experience documentation to support the appraiser's qualification for the certified classification, not just the incremental amount of experience required to move from the non-certified to the certified classification. For example, if a State accepted an experience affidavit from an appraiser to support the appraiser's initial hours to qualify for the

#### 1. Validation Required

States must implement a reliable validation procedure to verify that each applicant's:

- (1) Experience meets AQB Criteria;
- (2) experience is USPAP compliant; and
- (3) experience hours have been successfully completed consistent with AQB Criteria.

#### 2. Validation Procedures, Objectives and Requirements

##### a. Selection of Work Product

Program staff or State board members must select the work product to be analyzed for USPAP compliance; applicants may not have any role in selection of work product. States must analyze a representative sample of the applicant's work product.

##### b. USPAP Compliance

For appraisal experience to be acceptable under AQB Criteria, it must be USPAP compliant. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP. Persons analyzing work product for USPAP compliance must have sufficient knowledge to make that determination.

##### c. Determination of Experience Time Periods

When measuring the experience time period required by AQB Criteria, States must review each appraiser's experience log and note the dates of the first and last acceptable appraisal activity performed by the applicant. At a minimum, the time period spanned between those appraisal activities must comply with the AQB Criteria.

##### d. Supporting Documentation

States must maintain adequate documentation to support validation methods. The applicant's file, either electronic or paper, must include the information necessary to identify each appraisal assignment selected and analyzed by the State, notes, letters and/or reports prepared by the official(s) evaluating the report for USPAP compliance, and any correspondence exchanged with the applicant regarding the appraisals submitted. This supporting documentation may be discarded upon the completion of the first ASC Compliance Review performed

licensed classification, and subsequently that appraiser applies to upgrade to the certified residential classification, the State must require documentation to support the full experience hours required for the certified residential classification, not just the difference in hours between the two classifications.

after the credential issuance or denial for that applicant.

#### E. Examination

States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized appraiser classifications requiring an examination.

#### F. Summary of Requirements

##### Processing of Applications

1. States must process applications in a consistent, equitable and well-documented manner.<sup>44</sup>

2. States must ensure appraiser credential applications submitted for processing do not contain expired examinations as established by AQB Criteria.<sup>45</sup>

##### Education

1. States must verify that the applicant's claimed education courses are acceptable under AQB Criteria, whether for initial credentialing, renewal, upgrade or reinstatement.<sup>46</sup>

2. States must verify that the applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought, whether for initial credentialing, renewal, upgrade or reinstatement.<sup>47</sup>

3. States must maintain adequate documentation to support verification.<sup>48</sup>

4. States may not accept an affidavit for education claimed from applicants for certification. Effective July 1, 2013, States may not accept an affidavit for education claimed from applicants for any federally recognized credential.<sup>49</sup>

5. States may not accept an affidavit for continuing education claimed from applicants for reinstatement.<sup>50</sup>

6. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure.<sup>51</sup>

7. Audits of affidavits for continuing education credit claimed must be completed within sixty days from the date the renewed credential is issued.<sup>52</sup>

8. States are required to take remedial action when it is determined that more than ten percent of audited appraiser's affidavits for continuing education

<sup>44</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>45</sup> Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>52</sup> Title XI § 1118(a), 12 U.S.C. 3347.

credit claimed fail to meet the minimum AQB Criteria.<sup>53</sup>

9. States must require the 7-hour National USPAP Update Course for renewals consistent with AQB Criteria.<sup>54</sup>

10. States must take appropriate action to suspend an appraiser's eligibility to perform appraisals in federally related transactions when it determines that the appraiser's continuing education does not meet AQB Criteria until such time that the requisite continuing education has been completed. The State must notify the ASC as soon as practicable after taking such action in order for the appraiser's record on the National Registry to be updated appropriately.<sup>55</sup>

#### Experience

1. States may not accept an affidavit for experience credit claimed from applicants for certification. Effective July 1, 2013, States may not accept an affidavit for experience credit claimed from applicants for any federally recognized credential.<sup>56</sup>

2. States must ensure that appraiser experience logs conform to AQB Criteria.<sup>57</sup>

3. States must use a reliable means of validating appraiser experience claims on all initial or upgrade applications for appraiser credentialing.<sup>58</sup>

4. States must select the work product to be analyzed for USPAP compliance on all initial or upgrade applications for appraiser credentialing.<sup>59</sup>

5. States must analyze a representative sample of the applicant's work product on all initial or upgrade applications for appraiser credentialing.<sup>60</sup>

6. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP on all initial applications for appraiser credentialing.<sup>61</sup>

7. Persons analyzing work product for USPAP compliance must have sufficient knowledge to make that determination.<sup>62</sup>

#### Examination

1. States must ensure that an appropriate AQB-approved qualifying

examination is administered for each of the federally recognized credentials requiring an examination.<sup>63</sup>

#### Policy Statement 5

##### Reciprocity

##### A. Reciprocity Policy

Title XI contemplates the reasonably free movement of certified and licensed appraisers across State lines. Beginning July 1, 2013, the ASC will monitor Programs for compliance with the reciprocity provision of Title XI as amended by the Dodd-Frank Act.<sup>64</sup> Title XI requires that in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a policy in place for issuing reciprocal credentials IF:

a. The appraiser is coming from a State (Home State) that is "in compliance" with Title XI as determined by the ASC; AND

b. (i) The appraiser holds a valid credential from the Home State; AND (ii) the credentialing requirements of the Home State (as they exist at the time of application for reciprocal credential) meet or exceed those of the reciprocal credentialing State (Reciprocal State) (as they exist at the time of application for reciprocal credential).

An appraiser relying on a credential from a State that does not have such a policy in place may not perform appraisals for federally related transactions. A State may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy. However, States cannot impose additional impediments to issuance of reciprocal credentials.<sup>65</sup>

For purposes of implementing the reciprocity policy, States with an ASC Finding<sup>66</sup> of "Poor" do not satisfy the "in compliance" provision for reciprocity. Therefore, States are not required to recognize, for purposes of granting a reciprocal credential, the license or certification of an appraiser credentialed in a State with an ASC Finding of "Poor."

##### B. Application of Reciprocity Policy

The following examples illustrate application of reciprocity in a manner that complies with Title XI. The examples refer to the reciprocity policy requiring issuance of a reciprocal credential IF:

<sup>63</sup> Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>64</sup> Title XI § 1122 (b), 12 U.S.C. 3351.

<sup>65</sup> Effective July 1, 2013, States will be evaluated for compliance with this Title XI requirement.

<sup>66</sup> See Appendix A, *Compliance Review Process*, for an explanation of ASC Findings.

a. The appraiser is coming from a State that is "in compliance"; AND

b. (i) the appraiser holds a valid credential from that State; AND (ii) the credentialing requirements of that State (as they currently exist) meet or exceed those of the reciprocal credentialing State (as they currently exist).

##### 1. Additional Requirements Imposed on Applicants

State A requires that prior to issuing a reciprocal credential the applicant must certify that disciplinary proceedings are not pending against that applicant in any jurisdiction. Under b (ii) above, if this requirement is not imposed on all of its own applicants for credentialing, STATE A cannot impose this requirement on applicants for reciprocal credentialing.

##### 2. Credentialing Requirements

An appraiser is seeking a reciprocal credential in STATE A. The appraiser holds a valid credential in STATE Z, even though it was issued in 2007. This satisfies b (i) above. However in order to satisfy b (ii), STATE A would evaluate STATE Z's credentialing requirements as they currently exist to determine whether they meet or exceed STATE A's current requirements for credentialing.

##### 3. Multiple State Credentials

An appraiser credentialed in several states is seeking a reciprocal credential in State A. That appraiser's initial credentials were obtained through examination in the original credentialing State and through reciprocity in the additional States. State A requires the applicant to provide a "letter of good standing" from the State of original credentialing as a condition of granting a reciprocal credential. State A may not impose such a requirement since Title XI does not distinguish between credentials obtained by examination and credentials obtained by reciprocity for purposes of granting reciprocal credentials.

##### C. Appraiser Compliance Requirements

In order to maintain a credential granted by reciprocity, appraisers must comply with the credentialing State's policies, rules and statutes governing appraisers, including requirements for payment of certification and licensing fees, as well as continuing education.<sup>67</sup>

<sup>67</sup> A State may offer to accept continuing education (CE) for a renewal applicant who has satisfied CE requirements of a home State; however a State may not impose this as a requirement for renewal, thereby imposing a requirement for the renewal applicant to retain a home State credential.

<sup>53</sup> *Id.*

<sup>54</sup> Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>55</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>56</sup> *Id.*

<sup>57</sup> Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>58</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>59</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

#### D. Summary of Requirements

1. Effective July 1, 2013, in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a reciprocity policy in place for issuing a reciprocal credential to an appraiser from another State under the conditions specified in Title XI.<sup>68</sup>

2. States may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy; however, States may not impose additional impediments to issuance of reciprocal credentials.<sup>69</sup>

#### Policy Statement 6

##### Education

AQB Criteria sets forth minimum requirements for appraiser education courses. This Policy Statement addresses proper administration of education requirements for compliance with AQB Criteria. (For requirements concerning qualifying and continuing education in the application process, see Policy Statement 4, *Application Process*.)

##### A. Course Approval

States must ensure that approved appraiser education courses are consistent with AQB Criteria and maintain sufficient documentation to support that approved appraiser education courses conform to AQB Criteria.

States should ensure that course approval expiration dates assigned by the State coincide with the endorsement period assigned by the AQB's Course Approval Program or any other AQB-approved organization providing approval of course design and delivery.

States should ensure that educational providers are afforded equal treatment in all respects.<sup>70</sup>

The ASC encourages States to accept courses approved by the AQB's Course Approval Program.

##### B. Distance Education

States must ensure that distance education courses meet AQB Criteria and that the delivery mechanism for distance education courses offered by a non-academic provider has been

approved by an AQB-approved organization providing approval of course design and delivery.

#### C. Summary of Requirements

1. States must ensure that appraiser education courses are consistent with AQB Criteria.<sup>71</sup>

2. States must maintain sufficient documentation to support that approved appraiser courses conform to AQB Criteria.<sup>72</sup>

3. States must ensure the delivery mechanism for distance education courses offered by a non-academic provider has been approved by an AQB-approved organization providing approval of course design and delivery.<sup>73</sup>

#### Policy Statement 7

##### State Agency Enforcement

##### A. State Agency Regulatory Program

Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and completes investigations in a reasonable time period, appropriately disciplines sanctioned appraisers and maintains an effective regulatory program.<sup>74</sup>

##### B. Enforcement Process

States must ensure that the system for processing and investigating complaints<sup>75</sup> and sanctioning appraisers is administered in a timely, effective, consistent, equitable, and well-documented manner.

##### 1. Timely Enforcement

States must process complaints of appraiser misconduct or wrongdoing in a timely manner to ensure effective supervision of appraisers, and when appropriate, that incompetent or unethical appraisers are not allowed to continue their appraisal practice. Absent special documented circumstances, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date. Special documented circumstances are those extenuating circumstances (fully documented) beyond the control of the State agency that delays normal processing of a complaint such as: Complaints involving a criminal investigation by a law enforcement

agency when the investigative agency requests that the State refrain from proceeding; final disposition that has been appealed to a higher court; documented medical condition of the respondent; ancillary civil litigation; and complex fraud cases that involve multiple individuals and reports. Such special documented circumstances also include those periods when State rules require referral of a complaint to another State entity for review and the State agency is precluded from further processing of the complaint until it is returned. In that circumstance, the State agency should document the required referral and the time period during which the complaint was not under its control or authority.

##### 2. Effective Enforcement

Effective enforcement requires that States investigate allegations of appraiser misconduct or wrongdoing, and if allegations are proven, take appropriate disciplinary or remedial action. Dismissal of an alleged violation solely due to an "absence of harm to the public" is inconsistent with Title XI. Financial loss or the lack thereof is not an element in determining whether there is a violation. The extent of such loss, however, may be a factor in determining the appropriate level of discipline.

Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP and States must document how such persons are so qualified.

States must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint.

Closure of a complaint based on a State's statute of limitations results in dismissal of a complaint without the investigation of the merits of the complaint, and is inconsistent with the Title XI requirement that States assure effective supervision of the activities of credentialed appraisers.<sup>76</sup>

##### 3. Consistent and Equitable Enforcement

Absent specific documented facts or considerations, substantially similar cases within a State should result in similar dispositions.

##### 4. Well-Documented Enforcement

"Well-documented" means that States obtain and maintain sufficient relevant documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

<sup>76</sup> Title XI § 1117, 12 U.S.C. 3346.

<sup>68</sup> Title XI § 1122(b), 12 U.S.C. 3351.

<sup>69</sup> *Id.*

<sup>70</sup> For example:

(1) Consent agreements requiring additional education should not specify a particular course provider when there are other providers on the State's approved course listing offering the same course; and

(2) courses from professional organizations should not be automatically approved and/or approved in a manner that is less burdensome than the State's normal approval process.

<sup>71</sup> Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>72</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>73</sup> Title XI § 1118(a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>74</sup> Title XI § 1118(a), 12 U.S.C. 3347.

<sup>75</sup> See Appendix B, *Glossary of Terms*, for the definition of "complaint."

#### a. Complaint Files

Complaint files must:

- Include documentation outlining the progress of the investigation;
- demonstrate that appraisal reports are analyzed and all USPAP violations are identified;
- include rationale for the final outcome of the case (i.e., dismissal or imposition of discipline);
- include documentation explaining any delay in processing, investigation or adjudication;
- contain documentation that all ordered or agreed upon discipline, such as probation, fine, or completion of education is tracked and that completion of all terms is confirmed; and
- be organized in a manner that allows understanding of the steps taken throughout the complaint, investigation, and adjudicatory process.

#### b. Complaint Logs

States must track all complaints using a complaint log. The complaint log must record all complaints, regardless of their procedural status in the investigation and/or resolution process, including complaints pending before the State board, Office of the Attorney General, other law enforcement agencies, and/or offices of administrative hearings. The complaint log must include the following information (States are strongly encouraged to maintain this information in an electronic, sortable format):

1. Case number
2. Name of respondent
3. Actual date the complaint was received by the State
4. Source of complaint (e.g., consumer, lender, bank regulator, appraiser, hotline)
5. Current status of the complaint
6. Date the complaint was closed (e.g., final disposition by the administrative hearing agency, Office of the Attorney General, State Appraiser Regulatory Agency or Court of Appeals)
7. Method of disposition (e.g., dismissal, letter of warning, consent order, final order)

#### C. Summary of Requirements

1. States must maintain relevant documentation to enable understanding of the facts and determinations in the matter and the reasons for those determinations.<sup>77</sup>

2. States must resolve all complaints filed against appraisers within one year (12 months) of the complaint filing date,

except for special documented circumstances.<sup>78</sup>

3. States must ensure that the system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner.<sup>79</sup>

4. States must track complaints of alleged appraiser misconduct or wrongdoing using a complaint log.<sup>80</sup>

5. States must appropriately document enforcement files and include rationale.<sup>81</sup>

6. States must regulate, supervise and discipline their credentialed appraisers.<sup>82</sup>

7. Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP, and States must document how such persons are so qualified.<sup>83</sup>

#### Policy Statement 8

##### *Interim Sanctions*

##### A. Authority

Title XI grants the ASC authority to impose interim sanctions on individual appraisers pending State agency action and on State agencies that fail to have an effective Program as an alternative to or in advance of a non-recognition proceeding. In determining whether a Program is effective the ASC shall conduct an analysis as required by Title XI. An ASC Finding of Poor on the Report issued to a State at the conclusion of an ASC Compliance Review will trigger an analysis by the ASC for potential interim sanction(s).<sup>84</sup> The following provisions apply to the exercise by the ASC of its authority to impose interim sanction(s) on State agencies.

##### B. Opportunity To Be Heard or Correct Conditions

The ASC shall provide the State agency with:

1. written notice of intention to impose an interim sanction; and
2. opportunity to respond or to correct the conditions causing such notice to the State.

Notice and opportunity to respond or correct the conditions shall be in accordance with section C, *Procedures*.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Imposition of an interim sanction against a State agency may result in appraisers credentialed by that State being removed from the National Registry on an interim basis, not to exceed 90 days, pending State agency action.

#### C. Procedures

This section prescribes the ASC's procedures which will be followed in arriving at a decision by the ASC to impose an interim sanction against a State agency.

##### 1. Notice

The ASC shall provide a written Notice of intention to impose an interim sanction (Notice) to the State agency. The Notice shall contain the ASC's analysis as required by Title XI of the State's licensing and certification of appraisers, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers, the investigation of complaints, and enforcement actions against appraisers.<sup>85</sup> The ASC shall verify the State's date of receipt, and publish both the Notice and the State's date of receipt in the **Federal Register**.

##### 2. State Agency Response

Within 15 days of receipt of the Notice, the State may submit a response to the ASC's Executive Director. Alternatively, a State may submit a Notice Not to Contest with the ASC's Executive Director. The filing of a Notice Not to Contest shall not constitute a waiver of the right to a judicial review of the ASC's decision, findings and conclusions. Failure to file a Response within 15 days shall constitute authorization for the ASC to find the facts to be as presented in the Notice and analysis. The ASC, for good cause shown, may permit the filing of a Response after the prescribed time.

##### 3. Briefs, Memoranda and Statements

Within 45 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, the State agency may file with the ASC's Executive Director a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice and analysis.

##### 4. Oral Presentations to the ASC

Within 45 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, the State may file a request with the ASC's Executive Director to make oral presentation to the ASC. If the State has filed a request for oral presentation, the matter shall be heard within 45 days. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and is not a

<sup>85</sup> *Id.*

<sup>77</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

Meeting<sup>86</sup> of the ASC. On the appropriate date and time, the State agency will make the oral presentation before the ASC. Any ASC member may ask pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. Summary notes will be taken by ASC staff and made part of the record on which the ASC shall decide the matter.

5. Conduct of Interim Sanction Proceedings

(a) *Written Submissions.* All aspects of the proceeding shall be conducted by written submissions, with the exception of oral presentations allowed under subsection 4 above.

(b) *Disqualification.* An ASC member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record.

(c) *Authority of ASC Chairperson.* The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings.

(d) *Rules of Evidence.* Except as is otherwise set forth in this section, relevant material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) and other applicable law.

6. Decision of the ASC and Judicial Review

Within 90 days after the date of receipt by the State agency of the Notice as published in the **Federal Register**, or in the case of oral presentation having been granted, within 30 days after presentation, the ASC shall issue a final decision, findings and conclusions and shall publish the decision promptly in the **Federal Register**. The final decision shall be effective on issuance. The ASC's Executive Director shall ensure prompt circulation of the decision to the State agency. A final decision of the ASC is a prerequisite to seeking judicial review.

7. Computing Time

Time computation is based on business days. The date of the act, event or default from which the designated period of time begins to run is not included. The last day is included unless it is a Saturday, Sunday, or Federal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday.

8. Documents and Exhibits

Unless otherwise provided by statute, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the ASC's Executive Director in the proceeding's file and will be available for public inspection and copying.

9. Judicial Review

A decision of the ASC under this section shall be subject to judicial review. The form of proceeding for judicial review may include any applicable form of legal action,

including actions for declaratory judgments or writs of prohibitory or mandatory injunction in a court of competent jurisdiction.<sup>87</sup>

**Appendix A—Compliance Review Process**

The ASC monitors State Programs for compliance with Title XI. The monitoring of a State Program is largely accomplished through on-site visits known as a Compliance Review (Review). A Review is conducted over a two- to four-day period, and is scheduled to coincide with a meeting of the Program's decision-making body whenever possible. ASC staff reviews the seven compliance areas addressed in Policy Statements 1 through 7. Sufficient documentation demonstrating compliance must be maintained by a State and made available for inspection during the Review. ASC staff reviews a sampling of documentation in each of the seven compliance areas. The sampling is intended to be representative of the State Program in its entirety.

Based on the Review, ASC staff provides the State with an ASC staff report detailing preliminary findings. The State is given 60 days to respond to the ASC staff report. At the conclusion of the Review, a Compliance Review Report (Report) is issued to the State with the ASC Finding on the Program's overall compliance, or lack thereof, with Title XI. Deficiencies resulting in non-compliance in any of the seven compliance areas are cited in the Report. "Areas of Concern"<sup>88</sup> which potentially expose a Program to compliance issues in the future are also addressed in the Report. The ASC's final disposition is based upon the ASC staff report, the State's response and staff's recommendation.

The following chart provides an explanation of the ASC Findings and rating criteria for each ASC Finding category. The ASC Finding places particular emphasis on whether the State is maintaining an effective regulatory Program in compliance with Title XI.

ASC finding	Rating criteria	Review cycle*
Excellent .....	<ul style="list-style-type: none"> <li>State meets all Title XI mandates and complies with requirements of ASC Policy Statements.</li> <li>State maintains a strong regulatory Program .....</li> <li>Very low risk of Program failure .....</li> </ul>	2-year.
Good .....	<ul style="list-style-type: none"> <li>State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements.</li> <li>Deficiencies are minor in nature .....</li> <li>State is adequately addressing deficiencies identified and correcting them in the normal course of business.</li> <li>State maintains an effective regulatory Program .....</li> <li>Low risk of Program failure .....</li> </ul>	2-year.

<sup>86</sup>The proceeding is more in the nature of a Briefing not subject to open meeting requirements. The presentation is an opportunity for the State to brief the ASC—to offer, emphasize and clarify the

facts, policies and laws concerning the proceeding, and for the ASC members to ask questions. Additional consideration is given to the fact that this stage of the proceeding is pre-decisional.

<sup>87</sup> 5 U.S.C. 703—*Form and venue of proceeding.*

<sup>88</sup> See Appendix B, *Glossary of Terms*, for the definition of "Areas of Concern."

ASC finding	Rating criteria	Review cycle*
Needs Improvement ...	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements.</li> <li>• Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program.</li> <li>• State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies.</li> <li>• State regulatory Program needs improvement .....</li> <li>• Moderate risk of Program failure .....</li> </ul>	2-year with additional monitoring.
Not Satisfactory .....	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements.</li> <li>• Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program.</li> <li>• State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing.</li> <li>• State regulatory Program has substantial deficiencies .....</li> <li>• Substantial risk of Program failure .....</li> </ul>	1-year.
Poor <sup>89</sup> .....	<ul style="list-style-type: none"> <li>• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements.</li> <li>• Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program.</li> <li>• State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies.</li> <li>• High risk of Program failure .....</li> </ul>	Continuous monitoring.

\*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

The ASC has two primary Review Cycles: Two-year and one-year. Most States are scheduled on a two-year Review Cycle. States may be moved to a one-year Review Cycle if the ASC determines more frequent on-site Reviews are needed to ensure that the State maintains an effective Program. Generally, States are placed on a one-year Review Cycle because of non-compliance issues or serious areas of concerns that warrant more frequent on-site visits. Both two-year and one-year Review Cycles include a review of all aspects of the State’s Program.

The ASC may conduct Follow-up Reviews and additional monitoring. A Follow-up Review focuses only on specific areas identified during the previous on-site Review. Follow-up Reviews usually occur within 6–12 months of the previous Review. In addition, as a risk management tool, ASC staff identifies State Programs that may have a significant impact on the nation’s appraiser regulatory system in the event of Title XI compliance issues. For States that represent a significant percentage of the credentials on the National Registry, ASC staff performs annual on-site Priority Contact visits. The primary purpose of the Priority Contact visit is to review topical issues, evaluate regulatory compliance issues, and maintain a close working relationship with the State. This is not a complete Review of the Program. The ASC will also schedule a Priority Contact visit for a State when a specific concern is identified that requires special attention. Additional monitoring may be required where a deficiency is identified and reports on required or agreed upon corrective actions are required monthly or quarterly. Additional monitoring may include on-site monitoring as well as off-site monitoring.

<sup>89</sup> An ASC Finding of “Poor” may result in significant consequences to the State. See Policy Statement 5, *Reciprocity*; see also Policy Statement 8, *Interim Sanctions*.

**Appendix B—Glossary of Terms**

**AQB Criteria:** Refers to the *Real Property Appraiser Qualification Criteria* as established by the Appraiser Qualifications Board of the Appraisal Foundation setting forth minimum education, experience and examination requirements for the licensure and certification of real property appraisers, and minimum requirements for “Trainee” and “Supervisory” appraisers.

**Assignment:** As referenced herein, for purposes of temporary practice, “assignment” means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement.

**Complaint:** As referenced herein, any document filed with, received by, or serving as the basis for possible inquiry by the State agency regarding alleged violation of Title XI, Federal or State law or regulation, or USPAP by a credentialed appraiser, appraiser applicant, or for allegations of unlicensed appraisal activity. A complaint may be in the form of a referral, letter of inquiry, or other document alleging appraiser misconduct or wrongdoing.

**Credentialed appraisers:** Refers to State licensed, certified residential or certified general appraiser classifications.

**Disciplinary action:** As referenced herein, corrective or punitive action taken by or on behalf of a State agency which may be formal or informal, or may be consensual or involuntary, resulting in any of the following:

- a. revocation of credential;
- b. suspension of credential;
- c. written consent agreements, orders or reprimands;
- d. probation or any other restriction on the use of a credential;
- e. fine;
- f. voluntary surrender in lieu of disciplinary action;
- g. other acts as defined by State statute or regulation as disciplinary.

With the exception of voluntary surrender, suspension or revocation, such action may be

exempt from reporting to the National Registry if defined by State statute, regulation or written policy as “non-disciplinary.”

**Federally related transaction:** Refers to any real estate related financial transaction which: (a) A Federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser. (See Title XI § 1121 (4), 12 U.S.C. 3350.)

**Federal financial institutions regulatory agencies:** Refers to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration. (See Title XI § 1121 (6), 12 U.S.C. 3350.)

**Home State agency:** As referenced herein, State agency or agencies that grant an appraiser a licensed or certified credential. Residency in the home State is not required. Appraisers may have more than one home State agency.

**Non-federally recognized credentials or designations:** Refers to any State appraiser credential or designation other than State licensed, certified residential or certified general classifications, and trainee and supervisor classifications as defined in Policy Statement 1, and which is not recognized by the Federal regulators for purposes of their appraisal regulations.

**Real estate related financial transaction:** Any transaction involving: (a) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (b) the refinancing of real property or interests in real property; and (c) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities. (See Title XI § 1121 (5), 12 U.S.C. 3350.)

**State:** Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin

Islands. (American Samoa does not have a Program.)

*State board:* As referenced herein, "State board" means a group of individuals (usually appraisers, bankers, consumers, and/or real estate professionals) appointed by the Governor or a similarly positioned State official to assist or oversee State Programs. A State agency may be headed by a board, commission or an individual.

*Uniform Standards of Professional Appraisal Practice (USPAP):* Refers to appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation establishing minimum requirements for development and reporting of appraisals, including real property appraisal. Title XI requires appraisals prepared by State certified and licensed appraisers to be performed in conformance with USPAP.

\* \* \* \* \*

Dated: May 2, 2013.

By the Appraisal Subcommittee.

**Darrin Benhart,**  
*Vice Chairman.*

[FR Doc. 2013-12551 Filed 5-24-13; 8:45 am]

**BILLING CODE P**

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## 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 June 21, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Commercial Bancshares, Inc.*, El Campo, Texas; to merge with City State Bancshares, Inc., and thereby indirectly acquire City State Bank, both in Palacios, Texas.

Board of Governors of the Federal Reserve System, May 22, 2013.

**Michael J. Lewandowski,**  
*Assistant Secretary of the Board.*

[FR Doc. 2013-12553 Filed 5-24-13; 8:45 am]

**BILLING CODE 6210-01-P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Solicitation of Nominations for Membership on the National Vaccine Advisory Committee

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**Authority:** 42 U.S.C. 300aa-5, Section 2105 of the Public Health Service (PHS) Act, as amended. The Committee is governed by the provisions of Public Law 92-463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

**SUMMARY:** The National Vaccine Program Office (NVPO), a program office within the Office of the Assistant Secretary for Health, Department of Health and Human Services (HHS), is soliciting nominations of qualified candidates to be considered for appointment as members to the National Vaccine Advisory Committee (NVAC). The activities of this Committee are governed by the Federal Advisory Committee Act (FACA). Management support for the activities of this Committee is the responsibility of the NVPO.

Consistent with the National Vaccine Plan, the Committee advises and makes recommendations to the Assistant Secretary for Health in his capacity as the Director of the National Vaccine Program, on matters related to the Program's responsibilities. Specifically, the Committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States; recommends research priorities and other measures to enhance the safety and efficacy of vaccines. The Committee also advises the Assistant

Secretary for Health in the implementation of Sections 2102 and 2103 of the PHS Act; and identifies annually the most important areas of government and non-government cooperation that should be considered in implementing Sections 2102 and 2103 of the PHS Act.

**DATES:** All nominations for membership on the Committee must be received no later than 5:00 p.m. EDT on June 30, 2013, at the address listed below.

**ADDRESSES:** All nominations should be mailed or delivered to: Bruce Gellin, M.D., M.P.H., Executive Secretary, NVAC, Office of the Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Avenue SW., Room 715-H, Hubert H. Humphrey Building, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Mr. Guillermo Avilés-Mendoza, J.D., LL.M., Public Health Advisor, National Vaccine Program Office, Department of Health and Human Services, 200 Independence Avenue SW., Room 739G.4, Hubert H. Humphrey Building, Washington, DC 20201; (202) 205-2982; [nvpo@hhs.gov](mailto:nvpo@hhs.gov).

A copy of the Committee charter which includes the Committee's structure and functions as well as a list of the current membership can be obtained by contacting Mr. Avilés-Mendoza or by accessing the NVAC Web site at: [www.hhs.gov/nvpo/nvac](http://www.hhs.gov/nvpo/nvac).

**SUPPLEMENTARY INFORMATION: Committee Function, Qualifications, and Information Required:** As part of an ongoing effort to enhance deliberations and discussions with the public on vaccine and immunization policy, nominations are being sought for interested individuals to serve on the Committee. Individuals selected for appointment to the Committee will serve as voting members. The NVAC consists of 17 voting members. The Committee is composed of 15 public members, including the Chair, and two representative members. Public members shall be selected from individuals who are engaged in vaccine research or the manufacture of vaccines, or who are physicians, members of parent organizations concerned with immunizations, representatives of state or local health agencies or public health organizations. Representative members shall be selected from the vaccine manufacturing industry who are engaged in vaccine research or the manufacture of vaccines. Individuals selected for appointment to the Committee can be invited to serve terms of up to four years.

All NVAC members are authorized to receive the prescribed per diem

allowance and reimbursement for travel expenses that are incurred to attend meetings and conduct authorized Committee-related business, in accordance with Standard Government Travel Regulations. Individuals who are appointed to serve as public members are authorized also to receive honorarium for attending Committee meetings and to carry out other authorized Committee-related business. Individuals who are appointed to serve as representative members for a particular interest group or industry are not authorized to receive honorarium for the performance of these duties.

This announcement is to solicit nominations of qualified candidates to fill positions on the NVAC that are scheduled to be vacated in the public member category. The positions are scheduled to be vacated during the calendar year 2013.

### Nominations

In accordance with the charter, persons nominated for appointment as members of the NVAC should be among authorities knowledgeable in areas related to vaccine safety, vaccine effectiveness, and vaccine supply. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (i.e., specific attributes which qualify the nominee for service in this capacity); and a statement that the nominee is willing to serve as a member of the Committee (2) the nominator's name, address and daytime telephone number, home and/or work address, telephone number, and email address; and (3) a current copy of the nominee's curriculum vitae.

Individuals can nominate themselves for consideration of appointment to the Committee. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable. Applications cannot be submitted by facsimile. The names of Federal employees should not be nominated for consideration of appointment to this Committee. The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad

representation of geographic areas, gender, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as public members of Federal advisory committees. Individuals appointed to serve as public members of Federal advisory committees are classified as special Government employees (SGEs). SGEs are Government employees for purposes of the conflict of interest laws. Therefore, individuals appointed to serve as public members of NVAC are subject to an ethics review. The ethics review is conducted to determine if the individual has any interests and/or activities in the private sector that may conflict with performance of their official duties as a member of the Committee. Individuals appointed to serve as public members of the Committee will be required to disclose information regarding financial holdings, consultancies, and research grants and/or contracts.

Dated: May 21, 2013.

### Bruce Gellin,

*Executive Secretary, National Vaccine Advisory Committee, Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.*

[FR Doc. 2013-12598 Filed 5-24-13; 8:45 am]

**BILLING CODE 4150-28-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60-Day-13-13TD]

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-7570 or send comments to Ron Otten, 1600 Clifton

Road, MS-D74, Atlanta, GA 30333 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov).

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. Written comments should be received within 60 days of this notice.

### Proposed Project

“So What? Telling a Compelling Story” Template—New—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

### Background and Brief Description

Background: Stories are difficult to gather and track; therefore, OPHPR must use a creative method to collect relevant stories on the impacts of the Public Health Emergency Preparedness (PHEP) grant in state and local health departments and at the community level. Several resources and tools exist within CDC and partner organizations to share stories but the stories tend to be dated or already used in another capacity. OPHPR must be proactive in leveraging this template to collect new, timely anecdotes, described as “leads” in the rest of this notice, versus full stories, in order to describe the current successes and challenges public health officials face implementing the PHEP grant and associated activities.

CDC requests Office of Management and Budget (OMB) approval to collect information for three years.

*Description:* The storytelling template is a single page, double-sided guide for storytellers, described as “sources” in the remainder of this notice. With this tool, developers intend to dramatically reduce the burden on respondents and employees who may otherwise engage in complete story development with each new event. In this manner, staff may tease out pertinent and timely leads for potential development at a later date based on the needs of leadership. Development of a complete story from this template will occur with a small percentage of the leads. The text specifically requested is the source's name, telephone number, email address, organization, job title, the topic of the

compelling story, a headline, and up to three key bullet points. The intent of this template is to guide the development of bullets and headlines describing successes, impacts, and other funding-related activities.

The goals of these leads are shaped by four topics:

1. Showcasing the nature of the preparedness and response challenge: Something observed at ground level that clearly illustrates why preparedness and response work is necessary.

2. Illustrating the public health contribution: Examples that prove public health preparedness and

response not only makes a difference, but also describe the unique approach public health brings to emergency response.

3. Supporting the evidence-base: Examples that compliment qualitative research on evidence based interventions.

4. Demonstrating return on investment: Leads describing awareness of how funds are used and demonstrating fiscal responsibility and transparency. OPHPR representatives intend to collect story leads from a variety of sources including CDC Field Staff, state health officers, local health

department directors, preparedness planners, non-public health preparedness and response partners, the public and volunteer group members. The developers plan to leverage existing communications channels if the leads are used or developed into more lengthy stories. Just as stories are used currently, leads from this template will be potentially used in congressional inquiries, leadership presentations, annual reports, and CDC OPHPR Web sites.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
CDC Field Staff, state health officers, local health department directors, preparedness planners, non-public health preparedness and response partners, the public and volunteer group members.	“So What? Telling a Compelling Story”.	100	1	30/60	50
CDC Field Staff, state health officers, local health department directors, preparedness planners, non-public health preparedness and response partners, the public and volunteer group members.	So What? Telling a Compelling Story follow-up questions.	30	1	1.5	45
Total .....	.....	.....	.....	.....	95

**Ron A. Otten,**

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013-12480 Filed 5-24-13; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* Permanency Innovations Initiative Evaluation: Phase 2.

*OMB No.:* 0970-0408.

*Description:* The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) intends to collect data for an evaluation of the Permanency Innovations Initiative (PII). This 5-year

initiative, funded by the Children’s Bureau (CB) within ACF, is intended to build the evidence base for innovative interventions that enhance well-being and improve permanency outcomes for particular groups of children and youth who are at risk for long-term foster care and who experience the most serious barriers to timely permanency. The CB funded six grantees to identify local barriers to permanent placement and implement innovative strategies that mitigate or eliminate those barriers and reduce the likelihood that children will remain in foster care for 3 years or longer. In addition, evaluation plans were developed to support rigorous site-specific and cross-site studies to document the implementation and effectiveness of the grantees’ projects and the initiative overall.

Data collection for the PII evaluation includes a number of components being launched at different points in time. Phase 1 included data collection for a cross-site implementation evaluation

and site-specific evaluations of two PII grantees (Washoe County, Nevada, and the State of Kansas). Phase 1 data collection was approved in August 2012 (OMB #0970-0408). Phase 2 includes data collection for site-specific evaluations of two PII grantees: Illinois Department of Children and Family Services (DCFS); and the Los Angeles Gay and Lesbian Center’s Recognize Intervene Support Empower (RISE) project. A third phase of the study will include data collection for a cross-site cost study, additional data collection components for the RISE project, and data collection for California Department of Social Services’ California Partnership for Permanency (CAPP) project. Data for the evaluations will be collected through surveys of children, youth, foster parents, guardians, biological parents, and caseworkers and other agency staff.

*Respondents:* Children/youth and their parents or foster caregivers, caseworkers and other agency staff.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
DCFS Biological Parent Study Contact Form .....	1	173	.1	17

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
DCFS Biological Parent Interview .....	173	2	.25	86
DCFS Youth and Foster Parent Study Contact Form .....	1	228	.1	23
DCFS Foster Parent Interview .....	228	2	.75	342
DCFS Youth Interview .....	228	2	.75	342
DCFS burden .....				810
RISE Staff Pre-Test .....	157	1	.25	39
RISE Staff Post-Test .....	157	1	.25	39
RISE burden .....				78

Estimated Total Annual Burden Hours: 888

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: [OPREinfocollection@acf.hhs.gov](mailto:OPREinfocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: [OIRA\\_SUBMISSION@OMB.EOP.GOV](mailto:OIRA_SUBMISSION@OMB.EOP.GOV), Attn: Desk Officer for the Administration for Children and Families.

**Steven M. Hanmer,**  
*OPRE Reports Clearance Officer.*

[FR Doc. 2013-12546 Filed 5-24-13; 8:45 am]

BILLING CODE 4184-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

*Title:* Parents and Children Together (PACT) Evaluation.

*OMB No.:* 0970-0403.

*Description:* The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing data collection activity as

part of the Parents and Children Together (PACT) Evaluation. The objective of the PACT evaluation is to document and provide initial assessment of selected Responsible Fatherhood and Healthy Marriage grant programs that were authorized under the 2010 Claims Resolution Act. This information will be critical to informing decisions related to future investments in programming as well as the design and operation of such services.

PACT is utilizing three major, interrelated evaluation strategies: Impact evaluation; implementation evaluation; and qualitative evaluation. To collect data for these strategies, four instruments have been approved to-date, and 14 new instruments are under review as of the publish date of this notice.

*Instruments approved to-date:*

(1) Selecting Study Grantees (discussions with program and partner organization staff)—APPROVED April 20, 2012.

(2) Introductory Script (for RF program staff to discuss with program applicants)—APPROVED October 31, 2012.

(3) Baseline Survey (for RF study participants)—APPROVED October 31, 2012.

(4) RF study Management Information System (MIS)—APPROVED October 31, 2012.

*Instruments under review at publish date of this notice:*

(5) Introductory Script (for HM program staff to discuss with program applicants).

(6) Baseline Survey (for HM study participants).

(7) HM study Management Information System (MIS) (8) Semi-structured interview topic guide (for program staff).

(9) On-line survey (for program staff).

(10) Telephone interview guide (for program staff at referral organizations).

(11) On-line Working Alliance Inventory (for program staff and participants).

(12) Focus group discussion guide (for program participants).

(13) Telephone interview guide (for program dropouts).

(14) In-person, in-depth interview guide (for program participants).

(15) Telephone check-in guide (for program participants).

(16) Semi-structured interview topic guide (for program staff).

(17) Focus group discussion guide (for program participants).

(18) Questionnaire (for program participants in focus groups).

This 60-Day **Federal Register** Notice covers two new instruments:

(19) Follow-up Survey (for RF study participants).

(20) Follow-up Survey (for HM study participants).

Respondents: Program applicants, program participants, program staff, and staff at referral agencies.

**Annual Burden Estimates**

Some burden has already been approved for this study, and the instruments are still in use.

**ANNUAL BURDEN—ALREADY APPROVED**

Evaluation component	Total annual burden hours
Site Selection .....	50
Impact Study .....	4235
<b>Total .....</b>	<b>4285</b>

Some burden is currently under review, as of the date of this publication.

**ANNUAL BURDEN—CURRENTLY UNDER REVIEW**

Evaluation component	Total annual burden hours
Impact Study .....	8731
Implementation/Qualitative Study .....	1000
<b>Total .....</b>	<b>8831</b>

This current 60-Day **Federal Register** Notice covers two new instruments:

ANNUAL BURDEN: CURRENT REQUEST

Activity/respondent	Annual number of respondents	Number of responses per respondent	Average burden per response (hours)	Total annual burden hours
<b>IMPACT</b>				
<b>Responsible Fatherhood Grantee Impact Evaluation</b>				
(19) Follow-up survey: Study participants .....	1,600	1	0.75	1,200
<b>Healthy Marriage Grantee Impact Evaluation</b>				
(20) RF study MIS: Study participants .....	1,600	1	0.75	1,200
Total .....				2,400

Estimated Total Annual Burden Hours (for instruments previously approved and currently in use, instruments currently under review, and those associated with this 60-Day Notice): 15,516.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: [OPREinfocollection@acf.hhs.gov](mailto:OPREinfocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

**Steven M. Hanmer**,  
*Reports Clearance Officer.*  
 [FR Doc. 2013-12588 Filed 5-24-13; 8:45 am]  
**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2013-D-0558]

**Draft Guidance for Industry on Contract Manufacturing Arrangements for Drugs: Quality Agreements; Availability**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Contract Manufacturing Arrangements for Drugs: Quality Agreements." This guidance describes our current thinking on defining, establishing, and documenting the responsibilities of each party (or all parties) involved in the contract manufacturing of drugs subject to Current Good Manufacturing Practice (CGMP). In particular, we describe how parties involved in the contract manufacturing of drugs can utilize Quality Agreements to delineate their responsibilities and assure drug quality, safety, and efficacy.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft

guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by July 29, 2013.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993-0002; or Office of Communication, Outreach and Development (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448; or Communications Staff (HFV-12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Paula Katz, Center for Drug Evaluation and Research, Bldg. 51, Rm. 4314, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301-796-6972; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448, 301-827-6210; or Jonathan Bray, Center for Veterinary Medicine (HFV-232),

Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-276-9228.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a draft guidance for industry entitled "Contract Manufacturing Arrangements for Drugs: Quality Agreements." This draft guidance describes the FDA's current thinking on defining, establishing, and documenting the responsibilities of each party (or all parties) involved in the contract manufacturing of drugs subject to CGMP. Although written Quality Agreements are not explicitly required under existing CGMP regulations for human drugs and do not relieve any party to a contract of their responsibilities under CGMPs or under the Federal Food, Drug, and Cosmetic Act, this draft guidance explains how Owners and Contracted Facilities can draw on quality management principles to carry out the complicated process of contract drug manufacturing by defining, establishing, and documenting the responsibilities of all parties involved in drug manufacturing, testing, or other support operations. In particular, this guidance describes FDA's recommendation that Owners and Contracted Facilities implement written Quality Agreements as a tool to delineate responsibilities and assure the quality, safety, and effectiveness of drug products.

We are considering including examples or references to examples of Quality Agreements in the guidance. Stakeholders are encouraged to provide specific comments on publicly available and useful Quality Agreements for contract arrangements for the manufacturing of drugs.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

**II. Comments**

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). 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, and will be posted to the docket at <http://www.regulations.gov>.

**III. The Paperwork Reduction Act of 1995**

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and have been approved under OMB control numbers 0910-0014 and 0910-0001.

**IV. Electronic Access**

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm>, or <http://www.regulations.gov>.

Dated: May 21, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013-12539 Filed 5-24-13; 8:45 am]

**BILLING CODE 4160-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2010-D-0347]

**International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 13 on Bulk Density and Tapped Density of Powders General Chapter; Availability**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 13: Bulk Density and Tapped Density of Powders General Chapter." The guidance was prepared under the auspices of the

International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Bulk Density and Tapped Density of Powders General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. The guidance is in the form of an annex to the core guidance on the Q4B process entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions (core ICH Q4B guidance).

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993-0002, or the Office of Communication, Outreach and Development (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** *Regarding the guidance:* Robert King, Sr., Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4150, Silver Spring, MD 20993-0002, 301-796-1242; or Stephen Ripley, Center for Biologics

Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448, 301-827-6210.

*Regarding the ICH:* Michelle Limoli, Center for Drug Evaluation and Research, International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3342, Silver Spring, MD 20993-0002, 301-796-8377.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; CDER and CBER, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of July 14, 2010 (75 FR 40843), FDA published a notice announcing the availability of a draft guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 13: Bulk

Density and Tapped Density of Powders General Chapter." The notice gave interested persons an opportunity to submit comments by September 13, 2010.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in June 2012.

The guidance provides the specific evaluation results from the ICH Q4B process for the Bulk Density and Tapped Density of Powders General Chapter harmonized text originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance (<http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM073405.pdf>) made available in the **Federal Register** of February 21, 2008 (73 FR 9575). The annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

##### II. Comments

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). 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, and will be posted to the docket at <http://www.regulations.gov>.

##### III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.regulations.gov>, <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>.

Dated: May 21, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013-12538 Filed 5-24-13; 8:45 am]

BILLING CODE 4160-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2013-N-0510]

#### Clinical Development Programs for Opioid Conversion; Public Workshop; Request for Comments

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

**ACTION:** Notice of public workshop; request for comments.

The Food and Drug Administration (FDA), Center for Drug Evaluation and Research, is announcing a public scientific workshop to address public health concerns associated with the inclusion of equianalgesic opioid conversion tables in opioid product labels. Discussion will focus on the available data supporting the use of equianalgesic opioid conversion tables, problems associated with their use, and strategies used in clinical practice to convert patients from one opioid analgesic product to another. The goal of the workshop is to identify gaps in existing knowledge regarding equianalgesic opioid conversion in clinical practice, to develop a research agenda to address these gaps, and to identify mechanisms for communicating safe opioid analgesic conversion strategies to prescribers.

**Date and Time:** The public workshop will be held on July 29, 2013, from 8 a.m. to 4:30 p.m.

**Location:** The workshop will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993-0002. Entrance for non-FDA employees is through Building 1 where routine security check procedures will be performed. For parking and security information, please visit <http://www.fda.gov/AboutFDA/WorkingatFDA/Buildingsandfacilities/WhiteOakCampusInformation/ucm241740.htm>.

**Contact Persons:** Elizabeth Giaquinto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-3416, [Elizabeth.Giaquinto@fda.hhs.gov](mailto:Elizabeth.Giaquinto@fda.hhs.gov), or Lisa Basham, Center for Drug Evaluation

and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-1175,  
[Lisa.Basham@fda.hhs.gov](mailto:Lisa.Basham@fda.hhs.gov).

**Registration to Attend the Workshop and Requests to Participate in Open Public Hearing:** As part of the public workshop, an open public hearing will be held between 10:15 a.m. and 11:15 a.m. on July 29, 2013. If you wish to attend the public workshop or provide testimony for the open public hearing, please email your registration to: [IssuesWithOpioids@fda.hhs.gov](mailto:IssuesWithOpioids@fda.hhs.gov) by July 15, 2013. Those without email access may register by contacting one of the persons listed in the *Contact Persons* section of the document. Please provide complete contact information for each attendee, including name, title, affiliation, address, email address, and telephone number.

For those interested in providing testimony for the Open Public Hearing, please also provide a short abstract of your remarks by July 15, 2013. We will try to accommodate all persons who wish to testify; however, the duration of each speaker's testimony during this open public hearing may be limited by time constraints.

Registration for the public workshop is free and will be on a first-come, first-served basis. Early registration is recommended, because seating is limited. FDA may limit the number of participants from each organization as well as the total number of participants based on space limitations. Registrants will receive confirmation once they have been accepted for the workshop. Onsite registration on the day of the meeting will be based on space availability. If registration reaches maximum capacity, FDA will post a notice closing meeting registration for the workshop at: <http://www.fda.gov/Drugs/NewsEvents/ucm340470.htm>.

**Comments:** Submit either electronic or written comments by August 29, 2013. Submit electronic comments to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. 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, and will be posted to the docket at <http://www.regulations.gov>.

If you need special accommodations due to a disability, please contact Elizabeth Giaquinto or Lisa Basham (see

*Contact Persons*) at least 7 days in advance of the public workshop.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Introduction**

FDA is announcing this workshop to address public health concerns associated with the inclusion of equianalgesic opioid conversion tables in opioid product labels. Use of these conversion tables, intended for safe conversion between opioid products, has resulted in prescribing errors, serious adverse events, and deaths. While FDA will be giving a brief presentation on the use of conversion tables in the current product labels, we are holding this scientific workshop to bring the academic experts together to achieve consensus on what does or does not need to be done to improve how opioids are converted in clinical practice.

During the public workshop participants will do the following:

1. Review the data available supporting the basis of equianalgesic opioid conversion tables.
2. Review the problems associated with the use of equianalgesic opioid conversion tables, including prescribing errors and the occurrence of serious adverse events and deaths, with emphasis on the risks associated with extended-release opioids.
3. Review clinical strategies used for converting patients from one opioid product to another opioid product and the data to support the safety of those strategies.
4. Discuss gaps in the existing knowledge regarding equianalgesic opioid analgesic doses and opioid conversion in clinical practice.
5. Develop a research agenda to address those gaps.
6. Discuss the mechanisms for communicating about safe opioid analgesic conversion strategies to prescribers.

FDA will post the agenda and additional workshop background material approximately 5 days before the workshop at: <http://www.fda.gov/Drugs/NewsEvents/ucm340470.htm>.

#### **II. Transcripts**

Please be advised that approximately 30 days after the public workshop, a transcript will be available. It will be accessible at <http://www.regulations.gov>, and may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information

(ELEM-1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: May 21, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013-12537 Filed 5-24-13; 8:45 am]

**BILLING CODE 4160-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Health Resources and Services Administration**

#### **Agency Information Collection Activities; Proposed Collection; Public Comment Request**

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this Information Collection Request must be received within 60 days of this notice.

**ADDRESSES:** Submit your comments to [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or mail the HRSA Information Collection Clearance Officer, Room 10-29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or call the HRSA Information Collection Clearance Officer at (301) 443-1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* Children's Hospital Graduate Medical Education Payment Program (CHGME PP) Annual Report OMB No. 0915-0313—Extension

*Abstract:* The CHGME Payment Program was enacted by Public Law 106-129 to provide Federal support for

graduate medical education (GME) to freestanding children's hospitals, similar to Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

The CHGME Payment Program statute Public Law 109-307 requires that CHGME-participating hospitals provide information about their residency training programs in an annual report to HRSA that will be an addendum to the hospitals' annual applications for funds. Data are required to be collected on (1) the types of training programs that the hospital provided for residents such as

general pediatrics, internal medicine/pediatrics, and pediatric subspecialties including both medical subspecialties certified and non-medical subspecialties; (2) the number of training positions for residents, the number of such positions recruited to fill, and the number of positions filled; (3) the types of training that the hospital provided for residents related to the health care needs of different populations such as children who are underserved for reasons of family income or geographic location, including rural and urban areas; (4) changes in residency training including: (i) Changes in curricula, training experiences, and types of training programs, and benefits that have resulted from such changes, and (ii) changes for purposes of training residents in the measurement and improvement of the quality and safety of patient care; and (5) the numbers of residents (disaggregated by specialty and subspecialty) who completed their training at the end of the academic year

and care for children within the borders of the service area of the hospital or within the borders of the State in which the hospital is located.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Screening Instrument (HRSA 100-1) .....	56	1	56	9.2	515.2
Annual Report: Hospital and Program-Level Information (HRSA 100-2 and 3) .....	56	1	56	78.7	4,407.2
Total .....	56	.....	.....	.....	4,922.4

HRSA specifically requests comments on (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.

Dated: May 21, 2013.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2013-12557 Filed 5-24-13; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Proposed Collection; 60-Day Comment Request: National Institute of Mental Health Data Access Request and Use Certification**

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Mental Health (NIMH), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the

agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*To Submit Comments and for Further Information:* To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Keisha Shropshire, NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, OSPPC, NIMH, NIH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Rockville Pike, Bethesda, MD 20892, or call 301-443-4335 or Email your request, including your address to: [kshropsh@mail.nih.gov](mailto:kshropsh@mail.nih.gov). Formal requests for additional plans and instruments must be requested in writing.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

*Proposed Collection:* The National Institute of Mental Health Data Access Request and Use Certification (previously National Database for Autism Research Data Access Request), 0925-0667, Revision, Expiration Date: 01/31/2016; NIMH, NIH.

*Need and Use of Information Collection:* NIMH recently received OMB approval for use of the National Database for Autism Research (NDAR)

Data Use Certification (DUC) Form. NIMH is interested in renaming this form the “NIMH Data Access Request and Use Certification (DUC) Form” and using it to meet the unique data access needs of all NIMH data repositories. The NIMH DUC form is necessary for “Recipient” Principal Investigators and their organization or corporations with approved assurance from the DHHS Office of Human Research Protections to access data or images from NIMH repositories and datasets for research purposes. The primary use of this information is to document, track,

monitor, and evaluate the use of the NIMH repositories/datasets, as well as to notify interested recipients of updates, corrections or other changes to the database. There are currently three data repositories/sets positioned to use the NIMH DUC form: NDAR, the NIH Pediatric MRI Data Repository (PedsMRI), and the NIMH Clinical Research Datasets (NCRD).

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 380.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Form	Type of respondent	Number of respondents	Frequency of response	Average time per response (in hours)	Annual hour burden
NIMH Data Access Request and Use Certification.	Principal Investigators/Research Assistant.	240	1	95/60	380

Dated: May 16, 2013.  
**Sue Murrin**,  
*Executive Officer, NIMH, NIH.*  
 [FR Doc. 2013-12601 Filed 5-24-13; 8:45 am]  
**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Government-Owned Inventions; Availability for Licensing**

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301-496-7057; fax: 301-402-0220. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

**Assay for Quantifying Fragile X Mental Retardation-1 Gene Product**

**Description of Technology:** The invention is directed to a fluorescence based assay to quantify the protein product of the Fragile X Mental Retardation-1 (FMR1) gene in a biological sample.

Fragile X syndrome (FXS) is an X-linked genetic disease that is responsible for intellectual disability and is also the most common single gene cause of autism. FXS is typically caused by loss of expression of the FMR1 gene, which codes for an RNA-binding protein called FMRP. FXS patients exhibit a wide spectrum of symptoms with varying degrees of cognitive and psychosocial impairment. The severity of these symptoms correlates well with the levels of FMRP present in the FXS patient. Because the FMR1 gene is silenced in varying degrees, the levels of FMRP in any particular FXS patient could vary greatly.

Scientists at NIDDK and NCATS have developed a sensitive, time resolved fluorescence based assay to quantify FMRP levels in a biological sample. Unlike other assays, the invention assay utilizes two highly-specific antibodies that bind to different sites of FMRP so as to enable precise and reliable quantification. Currently, there is no approved drug to treat FXS. The invention assay can be used as a high throughput screen to identify and evaluate candidate drugs. In addition,

the invention assay can be used to assess and/or predict the severity of a patient’s condition based on the amount of FMRP present.

Potential Commercial Applications:

- Diagnosis assay
- High throughput screen of drug libraries
- Optimization assay to further develop potential drug candidates

Competitive Advantages:

- Fast, accurate, and reliable assay to quantify FMRP in easy-to-use fluorescence based format
- Adaptable for high throughput use

Development Stage:

- Prototype
- Pilot
- In vitro data available

Inventors: Wei Zheng (NCATS), Karen P. Usdin (NIDDK), Manju Swaroop (NCATS), Daman Kumari (NIDDK)

Intellectual Property: HHS Reference No. E-083-2013/0—US Application No. 61/793,577 filed 15 March 2013

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301-435-4074; [lauren.nguyen-antczak@nih.gov](mailto:lauren.nguyen-antczak@nih.gov).

Collaborative Research Opportunity: The National Center for Advancing Translational Sciences (NCATS) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Assay for Quantifying Fragile X Mental Retardation-1 Gene Product. For collaboration opportunities, please contact the NCATS Technology Development Coordinator at [NCATSPartnerships@mail.nih.gov](mailto:NCATSPartnerships@mail.nih.gov).

**A Novel HIV-1 Entry Inhibitor**

Description of Technology: The subject invention describes a novel polypeptide comprising a single human CD4 domain (mD1.22) which is highly soluble and stable with significantly higher neutralizing activity and lower non-specific binding to human blood cell lines. More specifically, mD1.22 is highly promising for several applications due to its biophysical properties: (1) For conjugating with cytotoxic molecules for eradication of HIV-infected cells; (2) for generating multi-specific multi-valent HIV inhibitors with high neutralization potency and breadth, and relatively small molecular size; (3) for generating nanobio-sensors for rapid HIV detection; and (4) for studying the biological functions of CD4 in immune responses and HIV entry.

**Potential Commercial Applications:**

- HIV therapeutics
- Prophylactics
- Detection reagents
- Research reagent

**Competitive Advantages:**

- Does not show measurable interaction with MHCII.
- Can be solubly expressed in *E. coli* with high yields leading to decreased production costs.

**Development Stage:**

- Early-stage
- In vitro data available

Inventors: Dimiter Dimitrov, Weizao Chen, Prabakaran Ponraj (NCI)

**Publications:**

1. Chen W, et al. Engineered single human CD4 domains as potent HIV-1 inhibitors and components of vaccine immunogens. *J Virol.* 2011;85(18):9395-405. [PMID 21715496]
2. Chen W, et al. Bifunctional fusion proteins of the human engineered antibody domain m36 with human soluble CD4 are potent inhibitors of diverse HIV-1 isolates. *Antiviral Res.* 2010;88(1):107-15. [PMID 20709110]
3. Chen W, et al. Human domain antibodies to conserved sterically restricted regions on gp120 as exceptionally potent cross-reactive HIV-1 neutralizers. *Proc Natl Acad Sci USA.* 2008;105(44):17121-6. [PMID 18957538]
4. Lagenaur LA, et al. sCD4-17b bifunctional proteins: extremely broad and potent neutralization of HIV-1 Env pseudotyped viruses from genetically diverse primary isolates. *Retrovirology* 2010 Feb 16;7:11. [PMID 20158904]
5. Saha P, et al. Design and characterization of stabilized derivatives of human CD4D12 and CD4D1. *Biochemistry* 2011 Sep 20;50(37):7891-900. [PMID 21827143]

Intellectual Property: HHS Reference No. E-033-2013/0—US Provisional

Patent Application No. 61/791,885 filed 15 Mar 2013

Related Technologies: HHS Reference No. E-103-2010/1—

- PCT Application No. PCT/US2011/3743961 filed on 20 May 2011
- National stage filing in EP (EP Application No. 11722270.3) and in USA (US Application No. 13/699,535) on 21 Nov. 2012

Licensing Contact: Sally H. Hu, Ph.D., M.B.A.; 301-435-5606; [hus@mail.nih.gov](mailto:hus@mail.nih.gov).

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize A Novel HIV-1 Entry Inhibitor. For collaboration opportunities, please contact John D. Hewes, Ph.D. at [hewesj@mail.nih.gov](mailto:hewesj@mail.nih.gov).

**Novel Fusion Proteins for HIV Vaccine**

Description of Technology: The subject invention describes novel fusion proteins (CD4i antibody-HIV-1 envelop glycoprotein (gp120)) which can be used as (1) potential vaccine immunogens that could be more efficient than gp120 alone; (2) candidate therapeutics; and (3) research reagents for exploration of HIV-1 gp120 conformational flexibility, elucidation of mechanisms of virus entry, and evasion of immune responses.

**Potential Commercial Applications:**

- Develop HIV vaccine
- Research reagent
- Research tools to study the conformational flexibility of gp120, the mechanisms of virus entry, and evasion of immune responses

**Competitive Advantages:**

- The potential vaccine immunogens that could be more efficient than gp120 alone
- Higher affinity with CD4 and antibodies directed against CD4-binding site than gp120 alone

**Development Stage:**

- Early-stage
- In vitro data available

Inventors: Dimiter Dimitrov and Weizao Chen (NCI)

**Publications:**

1. Dey B, et al. Characterization of human immunodeficiency virus type 1 monomeric and trimeric gp120 glycoproteins stabilized in the CD4-bound state: antigenicity, biophysics, and immunogenicity. *J Virol.* 2007 Jun;81(11):5579-93. [PMID 17360741]
2. Dey B, et al. Structure-based stabilization of HIV-1 gp120 enhances humoral immune responses to the induced co-receptor binding site. *PLoS Pathog.* 2009 May;5(5):el000445. [PMID 19478876]

3. Xiang SH, et al. Mutagenic stabilization and/or disruption of a CD4-bound state reveals distinct conformations of the human immunodeficiency virus type 1 gp120 envelope glycoprotein. *J Virol.* 2002 Oct;76(19):9888-99. [PMID 12208966]

Intellectual Property: HHS Reference No. E-256-2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Sally H. Hu, Ph.D., M.B.A.; 301-435-5605; [hus@mail.nih.gov](mailto:hus@mail.nih.gov).

Collaborative Research Opportunity: The National Cancer Institute (NCI) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Novel Fusion Proteins for HIV Vaccine. For collaboration opportunities, please contact John D. Hewes, Ph.D. at [hewesj@mail.nih.gov](mailto:hewesj@mail.nih.gov).

**A Novel Human Antibody for Deploying CH2 Based Therapeutics**

Description of Technology: The subject invention describes a novel human antibody (anti-CH2 Fab m01m1) which could be used safely in vitro and in vivo for the detection of CH2 (Fc and IgG as well). More specifically, anti-CH2 Fab m01m1 recognizes a conformational epitope on CH2 so it can be used to monitor the conformational changes when CH2 is modified and mutated, as well as to select proper folded isolated CH2 domains. Thus, anti-CH2 Fab m01m1 is a powerful research reagent for developing the CH2-based novel therapeutics (nanoantibodies, nAbs) and for identifying several binders against various antigens from CH2-based libraries.

**Potential Commercial Applications:**

- Research reagent
- Facilitate the development of CH2-based novel therapeutics
- Can be used as a library for therapeutic candidates

Competitive Advantages: Novel antibody.

**Development Stage:**

- Early-stage
  - In vitro data available
- Publications:

1. Prabakaran P, et al. Structure of an isolated unglycosylated antibody C(H)2 domain. *Acta Crystallogr D Biol Crystallogr.* 2008 Oct; 64(Pt 10):1062-7. [PMID 18931413]
2. Dimitrov DS. Engineered CH2 domains (nanoantibodies). *MAbs.* 2009 Jan-Feb;1(1):26-8. [PMID 20046570]
3. Gong R, et al. Engineered human antibody constant domains with increased stability. *J Biol Chem.* 2009 May 22;284(21):14203-10. [PMID 19307178]
4. Xiao X, et al. A large library based on a

novel (CH2) scaffold: identification of HIV-1 inhibitors. *Biochem Biophys Res Commun.* 2009 Sep 18;387(2):387–92. [PMID 19615335]

5. Wozniak-Knopp G, et al. Stabilisation of the Fc fragment of human IgG1 by engineered intradomain disulfide bonds. *PLoS One.* 2012;7(1):e30083 [PMID 22272277]

Inventors: Dimiter Dimitrov (NCI) and Rui Gong (formerly NCI).

Intellectual Property: HHS Reference No. E-245–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Sally H. Hu, Ph.D., M.B.A.; 301–435–5606; [hus@mail.nih.gov](mailto:hus@mail.nih.gov)

Collaborative Research Opportunity: The National Cancer Institute (NCI) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize A Novel Human Antibody for Deploying CH2 Based Therapeutics. For collaboration opportunities, please contact John D. Hewes, Ph.D. at [hewesj@mail.nih.gov](mailto:hewesj@mail.nih.gov).

#### Methods for Producing Stem Cell-like Memory T cells for Use in T cell-based Immunotherapies

Description of Technology: T cells currently employed for T cell-based immunotherapies are often senescent, terminally differentiated cells with poor proliferate and survival capacity. Recently, however, NIH scientists identified and characterized a new human memory T cell population with stem cell-like properties. Since these T cells have limited quantities in vivo, the scientists have developed methods by which high numbers of these cells can be generated ex vivo for use in T cell-based immunotherapies. Specifically, this technology describes a method for generating the stem cell-like memory T cells by stimulating naive T cells in the presence of inhibitors of GSK-3beta. It also describes a method for obtaining the stem cell-like memory T cells by sorting T cell lymphocytes using flow cytometry. These stem cell-like memory T cells display enhanced proliferation and survival upon transfer, have the multipotent capacity to generate all memory and effector T cell subsets and show increased anti-tumor activity in a humanized mouse tumor model. Consequently, the coupling of T cell receptor or chimeric receptor gene transfer with this method will enable the generation of a large number of memory stem cells with the desired specificity to effectively treat patients with cancer and chronic infectious diseases.

Potential Commercial Applications:

- Ex vivo generation of stem cell-like memory T cells for T cell-based immunotherapy
- Treatment for patients with cancer and chronic infectious diseases

Competitive Advantages:

- Enhanced proliferation and survival upon transfer
- Multipotent capacity to generate all memory and effector T cell subsets
- Increased anti-tumor activity

Development Stage:

- Pre-clinical
- In vitro data available
- In vivo data available (animal)

Inventors: Luca Gattinoni (NCI), Enrico Lugli (NIAID), Mario Roederer (NIAID), Nicholas Restifo (NCI)

Publications:

1. Gattinoni L, et al. A human T cell memory subset with stem cell-like properties. *Nat Med.* 2011 Sep 18;17(10):1290–7. [PMID 21926977]
2. Gattinoni L, et al. Wnt signaling arrests effector T cell differentiation and generates CD8+ memory stem cells. *Nat Med.* 2009 Jul;15(7):808–13. [PMID 19525962]
3. Lugli E, et al. Identification, isolation and in vitro expansion of human and nonhuman primate T stem cell memory cells. *Nat Protoc.* 2013 Jan;8(1):33–42. [PMID 23222456]

Intellectual Property: HHS Reference No. E-174–2012/0—PCT Application No. PCT/US12/053947 filed 06 Sep 2012

Licensing Contact: Whitney Hastings; 301–451–7337; [hastingw@mail.nih.gov](mailto:hastingw@mail.nih.gov)

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the use of T memory stem cells for T cell-based immunotherapies. For collaboration opportunities, please contact Luca Gattinoni at [gattinol@mail.nih.gov](mailto:gattinol@mail.nih.gov) or 301–451–6914, or Nicholas Restifo at [restifo@nih.gov](mailto:restifo@nih.gov) or 301–496–4904.

Dated: May 21, 2013.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2013–12531 Filed 5–24–13; 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; Time-Sensitive Obesity Prevention.

*Date:* June 24, 2013.

*Time:* 11:00 a.m. to 12:30 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:* Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, [barnardm@extra.niddk.nih.gov](mailto:barnardm@extra.niddk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Close Loop Technologies.

*Date:* July 2, 2013.

*Time:* 11:00 a.m. to 3:00 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:* Elena Sanovich, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, [sanoviche@mail.nih.gov](mailto:sanoviche@mail.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Advancing Clinical Research in Primary Glomerular Diseases (UM1).

*Date:* July 8, 2013.

*Time:* 2:00 p.m. to 6:00 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:* Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8895, [rushingp@extra.nidk.nih.gov](mailto:rushingp@extra.nidk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Causes and Consequences of Neutrophil Dysfunction in Early Onset Crohn's Disease.

*Date:* July 12, 2013.

*Time:* 1:00 p.m. to 2:00 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:* Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8895, [rushingp@extra.nidk.nih.gov](mailto:rushingp@extra.nidk.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: May 21, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-12530 Filed 5-24-13; 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; Program Project: Structural Methods to Study Dynamic Complexes.

*Date:* June 13-14, 2013.

*Time:* 11:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451-1323, [assamunu@csr.nih.gov](mailto:assamunu@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Neurodegeneration.

*Date:* June 13, 2013.

*Time:* 1:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

*Contact Person:* Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301-435-1203, [taupenol@csr.nih.gov](mailto:taupenol@csr.nih.gov).

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.

*Date:* June 24, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

*Contact Person:* Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301-402-4411, [tianbi@csr.nih.gov](mailto:tianbi@csr.nih.gov).

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

*Date:* June 24, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594-3163, [champoux@csr.nih.gov](mailto:champoux@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Oncological Sciences.

*Date:* June 24-25, 2013.

*Time:* 8:00 a.m. to 5:00 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:* Inese Z Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301-435-1034, [beitinsi@csr.nih.gov](mailto:beitinsi@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business Grant Applications: Immunology.

*Date:* June 24, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The River Inn, 924 25th Street NW., Washington, DC 20037.

*Contact Person:* Stephen M. Nigida, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301-435-1222, [nigidas@csr.nih.gov](mailto:nigidas@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Education, Psychology, and Biology in Health Behavior.

*Date:* June 24-25, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

*Contact Person:* John H Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301)267-9270, [newmanjh@csr.nih.gov](mailto:newmanjh@csr.nih.gov).

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

*Date:* June 24-25, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

*Contact Person:* Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301-435-1254, [yakovleva@csr.nih.gov](mailto:yakovleva@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics.

*Date:* June 24, 2013.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Marie-Jose Belanger, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC, Bethesda, MD 20892, 301-442-9049, [belangerm@csr.nih.gov](mailto:belangerm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Motor Function, Speech and Rehabilitation Overflow.

*Date:* June 24, 2013.

*Time:* 3:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

*Contact Person:* Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review,

National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, 301-437-9858, [tianbi@csr.nih.gov](mailto:tianbi@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Healthcare Delivery and Methodologies.

*Date:* June 25, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Rebecca Henry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, 301-435-1717, [henryr@mail.nih.gov](mailto:henryr@mail.nih.gov).

*Name of Committee:* Population Sciences and Epidemiology Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

*Date:* June 25–26, 2013.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 257-2638, [steeleln@csr.nih.gov](mailto:steeleln@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Bioengineering.

*Date:* June 25–26, 2013.

*Time:* 10:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Paul Sammak, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, MSC 7892, Bethesda, MD 20892, 301-435-0601, [sammakpj@csr.nih.gov](mailto:sammakpj@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Bioengineering.

*Date:* June 25, 2013.

*Time:* 11:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* David R Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301-435-2902, [filpuladr@mail.nih.gov](mailto:filpuladr@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member conflicts: Gastroenterology.

*Date:* June 25, 2013.

*Time:* 11:00 a.m. to 1:30 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:* Mushtaq A Khan, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301-435-1778, [khanm@csr.nih.gov](mailto:khanm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular mechanisms of Neurodegeneration.

*Date:* June 25, 2013.

*Time:* 1:00 p.m. to 3:30 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:* Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213-9887, [hamelinc@csr.nih.gov](mailto:hamelinc@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: May 21, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-12525 Filed 5-24-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Resource-Related Research Projects in Blood Diseases.

*Date:* June 18, 2013.

*Time:* 12:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, (Telephone Conference Call)

*Contact Person:* Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301-435-0297, [goltrykl@mail.nih.gov](mailto:goltrykl@mail.nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Career Development Awards: K01, K08.

*Date:* June 20–21, 2013

*Time:* 8:30 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate grant applications

*Place:* Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202,

*Contact Person:* Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Review Branch/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892-7924, 301-594-7947, [mintzerk@nhlbi.nih.gov](mailto:mintzerk@nhlbi.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 21, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-12527 Filed 5-24-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; 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:* Allergy, Immunology, and Transplantation Research Committee.

*Date:* June 18, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.  
*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Zhuqing Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-402-9523, [zhuqing.li@nih.gov](mailto:zhuqing.li@nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Clinical Trials Units for NIAID Networks.

*Date:* June 18, 2013.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 235, 6700A Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Sujata Vijh, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-594-0985, [vijhs@niaid.nih.gov](mailto:vijhs@niaid.nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Clinical Trials Unit for NIAID Networks NIAID.

*Date:* June 18, 2013.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 1205, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Uday K. Shankar, Ph.D., MSC, Scientific Review Officer, Scientific Review Program, DEAS/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-594-3193, [uday.shankar@nih.gov](mailto:uday.shankar@nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Clinical Trials Units for NIAID Networks.

*Date:* June 19, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 2C21/23, 10401 Fernwood Road, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Raymond R. Schleaf, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, (301) 451-3679, [schleafrr@niaid.nih.gov](mailto:schleafrr@niaid.nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Clinical Trials Units for NIAID Networks.

*Date:* June 19, 2013.

*Time:* 9:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 235, 6700A Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Sujata Vijh, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-594-0985, [vijhs@niaid.nih.gov](mailto:vijhs@niaid.nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Clinical Trials Unit for NIAID Networks.

*Date:* June 20, 2013.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 2C21/23, 10401 Fernwood Rd., Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Uday K. Shankar, Ph.D., MSC, Scientific Review Officer, Scientific Review Program, DEAS/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-594-3193, [uday.shankar@nih.gov](mailto:uday.shankar@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: May 21, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-12528 Filed 5-24-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; MSM Program Review.

*Date:* June 27, 2013.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, Suite 951, 6707 Democracy

Boulevard, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301-451-3397, [sukharem@mail.nih.gov](mailto:sukharem@mail.nih.gov).

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; 2013/10 NIBIB R13 Conference Grant Meeting.

*Date:* July 9, 2013.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Steven J. Zullo, Scientific Review Officer, National Institutes of Health/NIBIB, Division of Discovery Science and Technology, 6707 Democracy Blvd./Room 227, Bethesda, MD 20892, 301-451-4774, [Steven.zullo@nih.gov](mailto:Steven.zullo@nih.gov).

Dated: May 21, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-12529 Filed 5-24-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Human Genome Research Institute Special Emphasis Panel; SEP-UDN Coordinating Center.

*Date:* June 27, 2013.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Human Genome Research Institute, 3rd Floor Conference Room, 3146, 5635 Fishers Lane, Rockville, MD, (Telephone Conference Call).

*Contact Person:* Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301-594-4280, [mckenneyk@mail.nih.gov](mailto:mckenneyk@mail.nih.gov).  
(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: May 21, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-12526 Filed 5-24-13; 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:* Vascular and Hematology Integrated Review Group; Hemostasis and Thrombosis Study Section.

*Date:* June 17, 2013.

*Time:* 8:00 a.m. to 5:00 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:* Bukhtiar H. Shah, Ph.D., DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435-1233, [shahb@csr.nih.gov](mailto:shahb@csr.nih.gov).

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

*Date:* June 20-21, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

*Contact Person:* Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178,

MSC 7848, Bethesda, MD 20892, 301-500-5829, [sechu@csr.nih.gov](mailto:sechu@csr.nih.gov).

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

*Date:* June 20, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

*Contact Person:* Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301-435-0229, [hunnicuttgr@csr.nih.gov](mailto:hunnicuttgr@csr.nih.gov).

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

*Date:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

*Contact Person:* Dianne Camp, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164 MSC 7892, Bethesda, MD 20892, 301-435-1044, [campdm@mail.nih.gov](mailto:campdm@mail.nih.gov).

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.

*Date:* June 20, 2013.

*Time:* 8:00 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301-451-8754, [nussb@csr.nih.gov](mailto:nussb@csr.nih.gov).

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

*Date:* June 20, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

*Contact Person:* Delvin R. Knight, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 6194 MSC 4128, Bethesda, md 20892-7814, 301-435-1850, [knightdr@csr.nih.gov](mailto:knightdr@csr.nih.gov).

*Name of Committee:* Emerging Technologies and Training Neurosciences Integrated Review Group; Molecular Neurogenetics Study Section.

*Date:* June 20-21, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

*Contact:* Eugene Carstee, 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, [carstee@csr.nih.gov](mailto:carstee@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.

*Date:* June 20-21, 2013.

*Time:* 8:00 a.m. to 10:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington, DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

*Contact Person:* Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435-1164, [custerm@csr.nih.gov](mailto:custerm@csr.nih.gov).

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

*Date:* June 20-21, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

*Contact Person:* Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301-408-9866, [manospa@csr.nih.gov](mailto:manospa@csr.nih.gov).

*Name of Committee:* Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

*Date:* June 20, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

*Contact Person:* David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301-435-1022, [balasundaramd@csr.nih.gov](mailto:balasundaramd@csr.nih.gov).

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

*Date:* June 20-21, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301-435-1146, [jig@csr.nih.gov](mailto:jig@csr.nih.gov).

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review

Group; Clinical Neuroimmunology and Brain Tumors Study Section.

*Date:* June 20–21, 2013.

*Time:* 8:30 a.m. to 5:00 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:* Jay Joshi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, [joshij@csr.nih.gov](mailto:joshij@csr.nih.gov).

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

*Date:* June 20–21, 2013.

*Time:* 8:30 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance M Street Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037.

*Contact Person:* Michael M Sveda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1114, MSC 7890, Bethesda, MD 20892, 301–435–3565, [svedam@csr.nih.gov](mailto:svedam@csr.nih.gov).

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

*Date:* June 21, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

*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](mailto:luethkel@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical and Services Studies of Mental Disorders.

*Date:* June 21, 2013.

*Time:* 11:30 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

*Contact Person:* Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, [sechu@csr.nih.gov](mailto:sechu@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: May 21, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–12524 Filed 5–24–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

[Docket No. DHS–2013–0039]

#### Privacy Act of 1974; Department of Homeland Security National Protection and Programs Directorate—001 Arrival and Departure Information System, System of Records

**AGENCY:** Department of Homeland Security, Privacy Office.

**ACTION:** Notice of Privacy Act System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to update and reissue a Department of Homeland Security system of records titled Department of Homeland Security/National Protection and Programs Directorate—001 Arrival and Departure Information System (ADIS) System of Records (72 FR 47057, August 22, 2007). This system of records allows the Department of Homeland Security to collect and maintain records on individuals throughout the immigrant and non-immigrant pre-entry, entry, status management, and exit processes.

With the publication of this updated system of records, the following changes are being made: (1) A new category of records is being added; (2) the record source categories are being updated; and (3) administrative updates are being made globally to comply with the Consolidated and Further Continuing Appropriations Act of 2013, which transfers the United States Visitor Indicator Technology (US–VISIT) program's biometric identity management functions to the Office of Biometric Identity Management (OBIM), a newly created office within DHS/ National Protection and Programs Directorate (NPPD).

The exemptions for the existing system of records notice will continue to be applicable for this updated system of records notice and this system will be continued to be included in the Department of Homeland Security's inventory of record systems.

*Dates and Comments:* Submit comments on or before June 27, 2013. This updated system will be effective June 27, 2013. In particular, comments

are requested concerning the application of the exemptions to the new category of records.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2013–0039 by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202–343–4010.
- Mail: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will 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, please visit <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact: Emily Andrew, (202) 298–5200, Senior Privacy Officer, National Protection and Programs Directorate, Mailstop 0655, 245 Murray Lane, Washington, DC 20528. For privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) National Protection and Programs Directorate (NPPD) Office of Biometric Identity Management (OBIM) proposes to update and reissue a current DHS system of records titled, “DHS/NPPD—001 Arrival and Departure Information System (ADIS) System of Records” (72 FR 47057, August 22, 2007). A Final Rule exempting this system of records from certain provisions of the Privacy Act was published on August 22, 2007 (72 FR 46921).

ADIS is a system for the storage and use of biographic, biometric indicator, and encounter data on aliens who have applied for entry, entered, or departed the United States (U.S.). ADIS consolidates information from various systems in order to provide a repository of data held by DHS for pre-entry, entry, status management, and exit tracking of immigrants and non-immigrants. Its primary use is to facilitate the investigation of subjects of interest who may have violated their immigration

status by remaining in the United States beyond their authorized stay. The information is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, tribal, foreign, or international government agencies.

This system of records notice updates the categories of records and record source categories. Originally, records could be derived from entry or exit data of foreign countries collected by foreign governments in support of their respective entry and exit processes. These records collected from foreign governments were required to relate to individuals who have an existing record in ADIS. This update clarifies that although records collected from foreign governments must relate to individuals who have entered or exited the United States, in some instances there may be no pre-existing ADIS record for those individuals.

In March 2013, the Consolidated and Further Continuing Appropriations Act of 2013 (The Act) transferred the legacy US-VISIT overstay analysis mission to DHS/Immigration and Customs Enforcement (ICE) and the entry/exit policy to DHS/Customs and Border Protection (CBP). The Act also transferred the program's biometric identity management functions to the Office of Biometric Identity Management (OBIM), a newly created office within NPPD. Administrative updates are being made globally to comply with these changes.

Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

Consistent with DHS' information-sharing mission, information stored in the DHS/NPPD-001 Arrival and Departure Information System (ADIS) may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

The exemptions for the existing system of records notice will continue to be applicable for this updated system of records notice and this system will continue to be included in DHS' inventory of record systems. In the context of this updated system of records notice, the Department is

requesting comment on the application of the exemptions to the newly added category of records.

## II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/NPPD-001 Arrival and Departure Information System (ADIS) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

### System of Records

Department of Homeland Security (DHS)/National Protection and Programs Directorate (NPPD)-001.

### System Name:

DHS/NPPD-001 Arrival and Departure Information System (ADIS).

### SECURITY CLASSIFICATION:

Unclassified.

### SYSTEM LOCATION:

Records are maintained at the DHS/NPPD Headquarters in Washington, DC and field offices.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of aliens who have applied for entry, entered, or departed from the United States at any time. These individuals may be in records collected by DHS or other Federal, state, local, tribal, foreign, or international government organizations. This system primarily consists of records pertaining to alien immigrants (including lawful permanent residents) and non-immigrants. Some of these individuals

may change status and become United States citizens.

### CATEGORIES OF RECORDS IN THE SYSTEM:

ADIS contains biographic data, biometric indicator data, and encounter data. Biographic data includes, but is not limited to, name, date of birth, nationality, and other personal descriptive data. Biometric indicator data includes, but is not limited to, fingerprint identification numbers. Encounter data provides the context of the interaction between the immigrant or non-immigrant and the border management authority. This data includes, but is not limited to, encounter location, document types, document numbers, document issuance information, and address while in the United States.

ADIS also sometimes contains commentary from immigration enforcement officers, which includes references to active criminal and other immigration enforcement investigations and contains other confidential data fields used for enforcement purposes.

ADIS data may be derived from records related to entry or exit data of foreign countries collected by foreign governments in support of their respective entry and exit processes. Generally, records collected from foreign governments relate to individuals who have entered or exited the United States at some time, but in some instances there is no pre-existing ADIS record for the individual.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 202; 8 U.S.C. 1103, 1158, 1201, 1225, 1324, 1357, 1360, 1365a, 1365b, 1372, 1379, and 1732.

### PURPOSE(S):

This system of records is the primary repository of data held by DHS for near real-time entry and exit status tracking throughout the immigrant and non-immigrant pre-entry, entry, status management, and exit processes, based on data collected by DHS or other federal or foreign government agencies and used in connection with DHS national security, law enforcement, immigration, intelligence, and other DHS mission-related functions. Data is also used to provide associated testing, training, management reporting, planning and analysis, or other administrative purposes. Similar data may be collected from multiple sources to verify or supplement existing data and to ensure a high degree of data accuracy.

Specifically, the ADIS data will be used to identify lawfully admitted non-immigrants who remain in the United

States beyond their period of authorized stay, which may have a bearing on an individual's right or authority to remain in the country or to receive governmental benefits; to assist DHS in supporting immigration inspection at ports of entry (POE) by providing quick retrieval of biographic and biometric indicator data on individuals who may be inadmissible to the United States; and to facilitate the investigation process of individuals who may have violated their immigration status or may be subjects of interest for law enforcement or intelligence purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To appropriate federal, state, local, tribal, foreign, or international governmental agencies seeking information on the subjects of wants, warrants, or lookouts, or any other subject of interest, for purposes related to administering or enforcing the law, national security, or immigration, when consistent with a DHS mission-related function as determined by DHS.

B. To appropriate federal, state, local, tribal, foreign, or international government agencies charged with national security, law enforcement, immigration, intelligence, or other DHS mission-related functions in connection with the hiring or retention by such an agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency.

C. To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of a case or matter, or discovery proceedings.

D. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

E. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To contractors, grantees, experts, consultants, students, and others performing or working on a contract,

service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish a DHS mission function related to this system of records in compliance with the Privacy Act of 1974.

G. To appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DHS has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

H. To federal, state, local, tribal, foreign or international government intelligence or counterterrorism agencies or components when DHS becomes aware of an indication of a threat or potential threat to national or international security, or when such use is to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, digital media.

**RETRIEVABILITY:**

Records may be retrieved by a variety of data elements including, but not limited to, name, place and date of arrival or departure, document number, and fingerprint identification number.

**SAFEGUARDS:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the

information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

**RETENTION AND DISPOSAL:**

The following proposal for retention and disposal is pending approval with the National Archives and Records Administration (NARA): Testing and training data will be purged when the data is no longer required. Electronic records for which the statute of limitations has expired for all criminal violations or that are older than 75 years, whichever is longer, will be purged.

**SYSTEM MANAGER AND ADDRESS:**

ADIS System Manager, OBIM, U.S. Department of Homeland Security, Washington, DC 20528.

**NOTIFICATION PROCEDURE:**

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it may contain records from a law enforcement system. However, DHS/NPPD will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the DHS/NPPD FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "Contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP-0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from

the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov/foia> or 1-866-431-0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

#### RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

#### CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

#### RECORD SOURCE CATEGORIES:

Basic information contained in this system is supplied by individuals covered by this system and other federal, state, local, tribal, or foreign governments; private citizens; and public and private organizations.

ADIS data may be derived from records related to entry or exit data of foreign countries collected by foreign governments in support of their respective entry and exit processes. Generally, records collected from foreign governments relate to individuals who have entered or exited the United States at some time, but in some instances there is no pre-existing ADIS record for the individual.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8); (f); and (g) pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system from 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H); and (f) pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

Dated: May 16, 2013.

**Jonathan R. Cantor**,  
Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013-12390 Filed 5-24-13; 8:45 am]

**BILLING CODE 9110-9P-P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

[Docket No. DHS-2013-0038]

### Privacy Act of 1974; Department of Homeland Security U.S. Customs and Border Protection-007-Border Crossing Information System of Records

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Notice of Privacy Act System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security, U.S. Customs and Border Protection proposes to update and reissue a current Department of Homeland Security system of records titled, "Department of Homeland Security, U.S. Customs and Border Protection-007—Border Crossing Information System of Records." This system of records allows U.S. Customs and Border Protection to collect and maintain records on border crossing information for all individuals who enter, are admitted or paroled into, and—where available—exit from the United States, regardless of method or conveyance. This border crossing information includes certain biographical information; a photograph; certain itinerary information mandated or provided on a voluntary basis by air, sea, bus, and rail carriers or any other forms of passenger transportation; and the time and location of the border crossing.

This system of records notice was previously published in the **Federal Register** on July 25, 2008 (73 FR 43457). A Final Rule exempting portions of this system from certain provisions of the Privacy Act was published on February 3, 2010 (75 FR 5491). As part of DHS's ongoing effort to increase transparency regarding its collection of information, DHS/CBP is updating (1) the categories of individuals to include persons entering Canada from the United States, (2) the categories of records to include border crossing data from Canada, (3) the sources of information to include data provided by the Canada Border Services Agency (CBSA), and (4) the routine uses to include the sharing of

border crossing information with Canada. Additional routine uses were edited for clarity and for ease of use and understanding. In addition, DHS/CBP made non-substantive edits to the exemptions to ensure clarity.

DHS/CBP is updating this system of records notice to provide notice of the Beyond the Border (BTB) Entry/Exit Program with Canada. Through the Entry/Exit, the United States and Canada will exchange border crossing information about certain third-country nationals, permanent residents of Canada, and lawful permanent residents of the United States, at all automated land border ports of entry.

The exemptions for the existing system of records notice (July 25, 2008, 73 FR 43457) will continue to apply for this updated system of records notice and DHS will include this system in its inventory of record systems.

**Dates and Comments:** Submit comments on or before June 27, 2013. In particular, comments are requested concerning the application of the exemptions to the newly added categories of individuals, categories of records, routine uses, and sources of information for this system. This updated system will be effective June 27, 2013.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2013-0038 by one of the following methods:

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

- **Fax:** 202-343-4010.

- **Mail:** Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will 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, please visit <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact: Laurence E. Castelli (202-325-0280), Privacy Officer, U.S. Customs and Border Protection, 90 K Street NE., Washington, DC 20229. For privacy questions, please contact: Jonathan R. Cantor, (202) 343-1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) proposes to update and reissue a current DHS system of records titled, "DHS/CBP-007—Border Crossing Information (BCI) System of Records."

The priority mission of CBP is to prevent terrorists and terrorist weapons from entering the country while facilitating legitimate travel and trade. To facilitate this mission, CBP maintains border crossing information for all individuals who enter, are admitted or paroled into, and—where available—exit from the United States, regardless of method or conveyance. This border crossing information includes certain biographical information; a photograph; certain itinerary information mandated or provided on a voluntary basis by air, sea, and rail carriers or any other forms of passenger transportation; and the time and location of the border crossing. This border crossing information resides on the TECS information technology platform. As part of DHS's ongoing effort to increase transparency regarding its collection of information, DHS/CBP is updating this system of records to provide notice to the public about the update and expansion of the (1) categories of individuals, (2) categories of records, (3) sources of information for this system, and (4) routine uses. DHS/CBP previously published this system of records notice in the **Federal Register** on July 25, 2008 (73 FR 43457).

As part of DHS/CBP's overall border security and enforcement missions, CBP is the agency responsible for collecting and reviewing border crossing information from travelers entering and departing the United States. Upon arrival in the United States, all individuals crossing the border are subject to CBP processing. As part of this clearance process, each traveler entering the United States must first establish his or her identity, nationality, and admissibility, as applicable, to the satisfaction of a CBP officer. Additionally, CBP creates a record of an individual admission or parole into the United States at a particular time and port of entry. CBP also collects information about individuals as they exit the United States for law enforcement purposes and to document the border crossing.

To further CBP's immigration and law enforcement missions, as well as facilitate cross-border travel, CBP is expanding the sharing of border crossing information collected from

individuals as part of the Beyond the Border Entry/Exit Program. The program is divided into three phases. The first phase was a 90-day pilot program that tested the ability of DHS/CBP to match the data received from the Canada Border Services Agency (CBSA) to DHS/CBP existing entry records. Following the completion of the data match, DHS/CBP destroyed all data received through the pilot program.

The Beyond the Border Entry/Exit program is now entering the second phase, during which both countries intend to exchange border crossing information for third-country nationals, permanent residents of Canada, and lawful permanent residents of the United States at all automated land border ports of entry. CBP will not share information for U.S. citizens, Canadian citizens, asylees, refugees, individuals who have obtained a T, U, or Violence Against Women Act (VAWA) visa, or when the individual's citizenship is unknown. Individuals with a T, U, or VAWA visa fall under the U.S. government's victim protection visa program, which includes victims of human trafficking and domestic violence.

A future third phase is planned to allow CBP and CBSA to exchange entry data including U.S. citizens entering the U.S. and Canadian citizens entering Canada at any land port of entry between the U.S. and Canada. This exchange of border crossing entry information will assist both countries so that the record of an entry into one country establishes an exit record from the other, ultimately supporting each country in their immigration and law enforcement missions, as well as facilitating cross-border travel.

CBP may collect the border crossing information stored in this system of records through a number of ways. For example, CBP may collect information from: (1) Travel documents, such as foreign passport, presented by the individual at CBP ports of entry when the individual provided no advance notice of the border crossing to CBP; (2) carriers who submit information in advance of travel through the Advance Passenger Information System (APIS) (DHS/CBP-005—Advance Passenger Information System (November 18, 2008, (73 FR 68435))); (3) information stored in DHS/CBP-002—Global Enrollment System (GES) January 16, 2013 (78 FR 3441), as part of a trusted or registered traveler program; (4) non-federal governmental authorities that have issued valid travel documents approved by the Secretary of the Department of Homeland Security, such as an Enhanced Driver's License (EDL);

(5) another Federal Agency that has issued a valid travel document, such as Department of State Visa, Passport including Passport Card, or Border Crossing Card data; or (6) the CBSA pursuant to the Beyond the Border Entry/Exit Program. When a traveler is admitted, paroled into, or departs from the United States, the traveler's biographical information, photograph (when available), and crossing details (time and location) will be maintained in accordance with this BCI system of records.

DHS/CBP is updating the categories of individuals to include persons entering Canada from the United States for all individuals who enter, are admitted or paroled into, and—where available—exit from the United States, regardless of method or conveyance. This border crossing information includes certain biographical information; a photograph; certain itinerary information mandated or provided on a voluntary basis by air, sea, and rail carriers or any other forms of passenger transportation; and the time and location of the border crossing.

Consistent with DHS's information sharing mission, information stored in the DHS/CBP-007—Border Crossing Information (BCI) may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security function. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice (SORN).

Through this updated SORN, DHS is requesting comment on the application of these exemptions to the newly added categories of individuals, categories of records, sources of information, and routine uses for this system.

## II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends

administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/CBP-007—Border Crossing Information (BCI) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

#### System of Records

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-007

#### System Name:

DHS/CBP-007—Border Crossing Information (BCI)

#### SECURITY CLASSIFICATION:

Unclassified, Sensitive, For Official Use Only, Law Enforcement-Sensitive.

#### SYSTEM LOCATION:

Records are maintained at the CBP Headquarters in Washington, DC and field offices.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by BCI consist of persons, including U.S. citizens, lawful permanent residents, and immigrant and non-immigrant aliens who lawfully cross the United States border by air, land, or sea, regardless of method of transportation or conveyance. This system also contains information about certain individuals, excluding known U.S. or Canadian citizens, who enter Canada from the United States.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

- Full name (First, Middle, and Last);
- Date of birth;
- Gender;
- Travel document type (e.g., passport information, permanent resident card, Trusted Traveler Program card), number, issuing country or entity, and expiration date;
- Photograph (when available);
- Country of citizenship;
- Radio Frequency Identification (RFID) tag number(s) (if land/sea border crossing);
- Date/time of crossing;
- Lane for clearance processing;
- Location of crossing;
- Secondary Examination Status, and
- License Plate number (or Vehicle Identification Number (VIN), if no plate exists; only for land border crossings).

When applicable, information derived from an associated APIS transmission, including:

- airline carrier code;
- flight number;
- vessel name;
- vessel country of registry/flag;
- International Maritime Organization number or other official number of the vessel;
- voyage number;
- date of arrival/departure;
- foreign airport/port where the passengers and crew members began their air/sea transportation to the United States;
- for passengers and crew members destined for the United States, the location where the passenger and crew members will undergo customs and immigration clearance by CBP;
- for passengers and crew members who are transiting through (and crew on flights over flying) the United States and not clearing CBP, the foreign airport/port of ultimate destination, and status on board (whether an individual is crew or non-crew), and
- for passengers and crew departing the United States, the final foreign airport/port of arrival.

To the extent private aircraft operators and carriers operating in the land border environment may transmit APIS, either voluntarily or pursuant to a legal mandate, similar information may also be recorded in BCI by CBP with regard to such travel.

In the land border environment for both arrival and departure (when departure information is available), CBP also collects the License Plate number of the conveyance (or VIN number when no plate exists).

Under the Entry/Exist Program with Canada, records may also include border crossing data from the CBSA, including:

- Name (First, Middle, Last);
- Date of Birth;
- Nationality (citizenship);
- Gender;
- Document Type;
- Document Number;
- Document Country of Issuance;
- Port of entry location (Port code);
- Date of entry, and
- Time of entry.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for BCI comes from the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107-173, 116 Stat. 543 (2002); the Aviation and Transportation Security Act of 2001, Public Law 107-71, 115 Stat. 597 (2001); the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, 118 Stat. 3638 (2004); the Immigration and Nationality Act, as amended, including 8 U.S.C. 1185 and 1354; and the Tariff Act of

1930, as amended, including 19 U.S.C. 66, 1433, 1454, 1485, 1624 and 2071.

#### PURPOSE(S):

CBP collects and maintains this information to assist in screening persons arriving in or departing from the United States; to determine identity, citizenship, and admissibility; and to identify persons who may be or are suspected of being a terrorist or having affiliations to terrorist organizations, have active warrants for criminal activity, are currently inadmissible or have been previously removed from the United States, or have been otherwise identified as potential security risks or raise a law enforcement concern. For immigrant and non-immigrant aliens, the information is also collected and maintained in order to ensure that the information related to a particular border crossing is available for providing any applicable benefits related to immigration or other enforcement purposes. Lastly, CBP maintains this information in BCI to retain a historical record of persons crossing the border for law enforcement, counterterrorism, and benefits processing.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or
4. The U.S. or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management

inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS' efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To appropriate federal, state, tribal, local, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, when DHS believes the information would assist

enforcement of applicable civil or criminal laws.

I. To the Canada Border Services Agency for law enforcement and immigration purposes, as well as to facilitate cross-border travel, when an individual enters the United States from Canada.

J. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be relevant in countering the threat or potential threat.

K. To a federal, state, tribal, or local agency, other appropriate entity or individual, or foreign governments, in order to provide relevant information related to intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

L. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, or when the information is relevant and necessary to the protection of life or property.

M. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purposes of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease, to combat other significant public health threats, or to provide appropriate notice of any identified health threat or risk.

N. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings.

O. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation.

P. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when DHS is aware of a need to use relevant data for purposes of testing new technology and systems designed to enhance BCI.

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, digital media, and CD-ROM.

**RETRIEVABILITY:**

Records may be retrieved by name or other personal identifiers listed in the categories of records, above.

**SAFEGUARDS:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

**RETENTION AND DISPOSAL:**

CBP is working with NARA to develop the appropriate retention schedule based on the information below. For persons CBP determines to be U.S. Citizens (USC) and Lawful Permanent Residents (LPR), information in BCI that is related to a particular border crossing is maintained for fifteen years from the date when the traveler was admitted or paroled into or departed the U.S., at which time it is deleted from BCI. For non-immigrant aliens, the information will be maintained for seventy-five (75) years from the date of admission/parole into or departure from the United States in

order to ensure that the information related to a particular border crossing is available for providing any applicable benefits related to immigration or for other law enforcement purposes. For non-immigrant aliens who become USCs or LPRs following a border crossing that leads to the creation of a record in BCI, the information related to border crossings prior to that change in status will follow the 75-year retention period. All information regarding border crossing by such persons following their change in status will follow the 15-year retention period applicable to USCs and LPRs. For all travelers, however, BCI records linked to active law enforcement lookout records, DHS/CBP matches to enforcement activities, and/or investigations or cases will remain accessible for the life of the primary records of the law enforcement activities to which the BCI records may relate, to the extent retention for such purposes exceeds the normal retention period for such data in BCI.

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Automated Systems, U.S. Customs and Border Protection Headquarters, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

**NOTIFICATION PROCEDURE:**

DHS allows persons (including foreign nationals) to seek administrative access under the Privacy Act to information maintained in BCI. However, the Secretary of Homeland Security has exempted portions of this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. DHS/CBP, however, will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or CBP FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "Contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Lane SW., Building 410, STOP-0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy

Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. § 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov/foia> or 1-866-431-0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**RECORD ACCESS PROCEDURES:**

See "Notification procedure" above.

**CONTESTING RECORD PROCEDURES:**

See "Notification procedure" above.

**RECORD SOURCE CATEGORIES:**

The system contains certain data received from individuals who arrive in, depart from, or transit through the United States. This system also contains information collected from carriers that operate vessels, vehicles, aircraft, and/or trains that enter or exit the United States, including private aircraft operators. The system also contains border crossing information received from CBSA.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

No exemption shall be asserted with respect to border crossing information about an individual maintained in the system. In addition to the disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, information in the system may be shared with law enforcement and/or intelligence agencies pursuant to the above routine

uses. The Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routines uses. Disclosing the fact that a law enforcement or intelligence agency has sought particular records may affect ongoing law enforcement activities. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), exempted this system from the following provisions of the Privacy Act: Sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS has exempted section (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

Dated: May 16, 2013.

**Jonathan R. Cantor,**

*Acting Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2013-12388 Filed 5-24-13; 8:45 am]

**BILLING CODE 9111-14-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

[Docket No. USCG-2012-1066]

**Collection of Information Under Review by Office of Management and Budget**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for the following collection of information: 1625-new, Various International Agreement Certificates and Documents. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before June 27, 2013.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2012-1066] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid

duplicate submissions, please use only one of the following means:

(1) *Online*: (a) To Coast Guard docket at <http://www.regulation.gov>. (b) To OIRA by email via: [OIRA-submission@omb.eop.gov](mailto:OIRA-submission@omb.eop.gov).

(2) *Mail*: (a) DMF (M-30), DOT, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery*: To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) *Fax*: (a) To DMF, 202-493-2251. (b) To OIRA at 202-395-6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at <http://www.regulations.gov>.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd Street SW., STOP 7101, Washington, DC 20593-7101.

**FOR FURTHER INFORMATION CONTACT:** Contact Lieutenant Commander Christopher Gagnon, Domestic Vessels Division, U.S. Coast Guard at [cg-cvc-1@uscg.mil](mailto:cg-cvc-1@uscg.mil), for questions on this document. Contact Ms. Barbara Hairston, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

#### **SUPPLEMENTARY INFORMATION:**

#### **Public Participation and Request for Comments**

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of

the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2012-1066], and must be received by June 27, 2013. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see "Privacy Act" paragraph below.

#### **Submitting Comments**

If you submit a comment, please include the docket number [USCG-2012-1066], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via <http://www.regulations.gov>), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit

them by only one means. To submit your comment online, go to <http://www.regulations.gov>, and type USCG-2012-1066 in the Search box, then click on the "Open Docket Folder" option. 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 will address them accordingly.

#### **Viewing Comments and Documents**

To view the comments go to <http://www.regulations.gov>, insert USCG-2012-1066 in the Search box, then click on the "Open Docket Folder" option. If you do not have access to the internet, you may view the docket 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.

OIRA posts its decisions on ICRs online at <http://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-new.

#### **Privacy Act**

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

#### **Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day Notice (78 FR 9709; February 11, 2013) required by 44 U.S.C. 3506(c)(2). That Notice elicited no COI-related comments. Accordingly, no changes have been made to the collection. The above 60-day Notice also sought comments on a draft Maritime Labour Convention (MLC) Navigation and Vessel Inspection Circular (NVIC). The Coast Guard will publish a separate

Notice in the **Federal Register** to addresses how we responded to the MLC NVIC-related comments.

### Information Collection Request

*Title:* Various International Agreement Certificates and Documents.  
*OMB Control Number:* 1625-new.

*Summary:* This information collection is associated with the Maritime Labour Convention, 2006. The Coast Guard plans to establish a voluntary inspection program for vessels wishing to document compliance with the requirements of the Convention. U.S. commercial vessels that operate on international routes will be eligible to participate.

*Need:* The information is needed to determine if a vessel is in compliance with the Convention.

*Forms:* CG-16450, MLC Statement of Voluntary Compliance; CG-16450A, Interim MLC Statement of Voluntary Compliance; CG-16450B, Declaration of MLC Part I Statement of Voluntary Compliance; CG-16450C, MLC Inspection Report

*Respondents:* Vessel owners and operators.

*Frequency:* On occasion. We estimate two responses per respondent, one for the Convention application and one for the recordkeeping of Coast Guard-issued documents.

*Hour Burden Estimate:* The estimated burden of this new collection is 4,150 hours a year.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: May 21, 2013.

**Paul F. Thomas,**

*Captain, U.S. Coast Guard, Director of Inspections & Compliance.*

[FR Doc. 2013-12544 Filed 5-24-13; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: [FEMA-2013-0022] OMB No. 1660-0112]

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning submission of application and required documentation for the FEMA Preparedness Grants: Transit Security Grant Program (TSGP).

**DATES:** Comments must be submitted on or before July 29, 2013.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at [www.regulations.gov](http://www.regulations.gov) under Docket ID FEMA-2013-0022. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Washington, DC 20472-3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Steven P. Billings, Investigative Analyst, FEMA, Grant Programs Directorate, (202) 786-9516. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646-3347 or email address: [FEMA-Information-Collections-Management@dhs.gov](mailto:FEMA-Information-Collections-Management@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Transit Security Grant Program (TSGP) is a FEMA grant program that focuses on transportation infrastructure protection activities. The collection of information

for TSGP is mandated by Section 1406, Title XIV of the Implementing Recommendations of the 9/11 Commission Act of 2007, 6 U.S.C. 1135, which directs the Secretary to establish a program for making grants to eligible public transportation agencies for security improvements. Additionally, information is collected in accordance with Section 1406(c) of the Implementing Recommendations of the 9/11 Commission Act of 2007, 6 U.S.C. 1135(c), which authorizes the Secretary to determine the requirements for grant recipients, including application requirements.

The program provides funds to owners and operators of transit systems (which include intra-city bus, commuter bus, and all forms of passenger rail) to protect critical surface transportation infrastructure and the traveling public from acts of terrorism, major disasters, and other emergencies.

### Collection of Information

*Title:* FEMA Preparedness Grants: Transit Security Grant Program (TSGP).

*OMB Number:* 1660-0112.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*FEMA Forms:* FEMA Form 089-4, TSGP Investment Justification Template.

*Abstract:* The TSGP is an important component of the Department of Homeland Security's effort to enhance the security of the Nation's critical infrastructure. The program provides funds to owners and operators of transit systems to protect critical surface transportation infrastructure and the traveling public from acts of terrorism, major disasters, and other emergencies.

*Affected Public:* State, Local, or Tribal Government.

*Number of Respondents:* 123.

*Number of Responses:* 123.

*Estimated Total Annual Burden Hours:* 5,043 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local, or Tribal Government.	TSGP Investment Justification/FEMA Form 089-4.	123	1	123	17	2,091	\$29.16	\$60,973.56
State, Local, or Tribal Government.	Regional Transit Security Strategy.	123	1	123	24	2,952	29.16	86,080.32
Total .....	.....	123	.....	123	.....	5,043	.....	147,053.88

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is \$147,053.88. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is \$747,877.20.

#### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: May 20, 2013.

#### Charlene D. Myrthil,

Director, Records Management Division,  
Mission Support Bureau, Federal Emergency  
Management Agency, Department of  
Homeland Security.

[FR Doc. 2013-12577 Filed 5-24-13; 8:45 am]

**BILLING CODE 9111-19-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Federal Emergency Management Agency

[Docket ID: [FEMA-2013-0023] OMB No. 1660-0113]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the FEMA Preparedness Grants: Tribal Homeland Security Grant Program (THSGP).

**DATES:** Comments must be submitted on or before July 29, 2013.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at [www.regulations.gov](http://www.regulations.gov) under Docket ID FEMA-2013-0023. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Washington, DC 20472-3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via

the link in the footer of [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Latanya Watson, Program Specialist, FEMA, Grant Programs Directorate, 202-786-9540. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646-3347 or email address: [FEMA-Information-Collections-Management@dhs.gov](mailto:FEMA-Information-Collections-Management@dhs.gov).

**SUPPLEMENTARY INFORMATION:** FEMA's Tribal Homeland Security Grant Program (THSGP) is authorized by Sections 2004 and 2005 of the Homeland Security Act of 2002, as amended by Section 101, Title I of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53, (6 U.S.C. 605 and 606). THSGP provides supplemental funding to eligible Tribes to help strengthen the Nation against risks associated with potential terrorist attacks. THSGP supports building and sustaining capabilities through planning, equipment, training, and exercise activities. This law empowers the FEMA Administrator to make grant awards directly to eligible Tribes and requires the Administrator to accept appropriate application data submitted by eligible Tribes, including:

- the purpose for which the Tribe seeks grant funds and the reasons why the Tribe needs the grant to meet its target capabilities;
- a description of how the Tribe plans to implement the grant funds to fill gaps and address needs;
- an indication of the National Preparedness Goal core capabilities that will be supported
- an indication of the mission areas that will be supported
- a budget showing how the Tribe intends to expend the grant funds; and
- a directly eligible Tribe must provide a copy of its application to each State within which any part of the Tribe is located for review before the Tribe submits such application to the Department.

**Collection of Information**

*Title:* FEMA Preparedness Grants: Tribal Homeland Security Grant Program (THSGP).

*OMB Number:* 1660-0113.

*Type of Information Collection:* Revision of a currently approved information collection.

*FEMA Forms:* FEMA Form 089-22, THSGP—Tribal Investment Justification Template.

*Abstract:* The THSGP provides supplemental funding to directly eligible Tribes to help strengthen the nation against risks associated with potential terrorist attacks. This program provides funds to build capabilities at

the State & local levels and implement goals and objectives included in state homeland security strategies.

*Affected Public:* State, Local, or Tribal Government.

*Number of Respondents:* 60.

*Number of Responses:* 60.

*Estimated Total Annual Burden*

*Hours:* 18,010 hours.

**ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS**

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	THSGP—Tribal Investment Justification Template/ FEMA Form 089-22.	60	1	60	300	18,000	\$38.14	\$686,520
State, Local or Tribal Government.	Copy of Application provided to State prior to submission/No Form.	60	1	60	*0.167	10	38.14	381.40
Total .....	.....	60	.....	60	.....	18,010	.....	686,901.40

• **Note:** The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.  
\*(10 minutes)

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is \$686,901.40. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is \$393,041.00.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: May 20, 2013.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2013-12573 Filed 5-24-13; 8:45 am]

**BILLING CODE 9111-19-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**[Docket ID: [FEMA-2013-0019] OMB No. 1660-0110]**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the information collection activities for the Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP).

**DATES:** Comments must be submitted on or before July 29, 2013.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at [www.regulations.gov](http://www.regulations.gov) under Docket ID FEMA-2013-0019. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief

Counsel, DHS/FEMA, 500 C Street SW., Washington, DC 20472-3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Angel McLaurine-Qualls, Program Specialist, FEMA, Grant Programs Directorate, 202-786-9532. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646-3347 or email address: [FEMA-Information-Collections-Management@dhs.gov](mailto:FEMA-Information-Collections-Management@dhs.gov).

**SUPPLEMENTARY INFORMATION:** FEMA's Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP) provides funding support for target hardening activities to nonprofit organizations that are determined by the Secretary of Homeland Security to be at high risk of terrorist attack. The collection of information for the UASI Nonprofit Security Grant Program is mandated by Section 2003 of the Homeland Security Act of 2002, 6 U.S.C. 604, as amended by Section 101, Title I of the Implementing Recommendations of the 9/11

Commission Act of 2007, Public Law 110-53.

**Collection of Information**

*Title:* FEMA Preparedness Grants: Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP).

*OMB Number:* 1660-0110.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*FEMA Forms:* FEMA Form 089-25, NSGP Investment Justification Template; FEMA Form 089-24, NSGP

Prioritization of the Investment Justifications.

*Abstract:* The NSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments. Information collected provides narrative details on proposed activities (Investments) that will be

accomplished with grant funds and prioritizes the list of applicants from each requesting State. This program is designed to promote coordination and collaboration in emergency preparedness activities among public and private community representatives, State and local government agencies, and Citizen Corps Councils.

*Affected Public:* Not-for-profit Institutions; State, Local or Tribal Government.

*Number of Respondents:* 1,133.

*Number of Responses:* 1,133.

*Estimated Total Annual Burden Hours:* 94,875 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
Not-for-profit Institutions	NSGP Investment Justification Template/ FEMA Form 089-25.	1,100	1	1,100	84	92,400	\$37.09	\$3,427,116.00
State, Local or Tribal Government.	NSGP Prioritization of the Investment Justifications/FEMA Form 089-24.	33	1	33	75	2,475	48.13	119,121.75
Total .....	.....	1,133	.....	1,133	.....	94,875	.....	3,546,237.70

\*Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is \$3,546,237.70. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is \$388,618.70.

**Comments**

Comments may be submitted as indicated in the ADDRESSES caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: May 20, 2013.

**Charlene D. Myrthil,**  
 Director, Records Management Division,  
 Mission Support Bureau, Federal Emergency  
 Management Agency, Department of  
 Homeland Security.

[FR Doc. 2013-12579 Filed 5-24-13; 8:45 am]

**BILLING CODE 9111-19-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID: [FEMA-2013-0021] OMB No. 1660-0115]

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the information

collection activities required to administer the Environmental and Historic Preservation Environmental Screening Form.

**DATES:** Comments must be submitted on or before July 29, 2013.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at [www.regulations.gov](http://www.regulations.gov) under Docket ID FEMA-2013-0021. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Washington, DC 20472-3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Tom Harrington, Branch Chief, FEMA, Grant Programs Directorate, (202) 786-9791 or

Tom.Harrington@fema.dhs.gov. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646-3347 or email address: FEMA-Information-Collections-Management@dhs.gov.

**SUPPLEMENTARY INFORMATION:** FEMA, Grant Programs Directorate (GPD) awards thousands of grants and each year through various grant programs. These programs award funds for projects used to improve homeland security and emergency preparedness. The National Environmental Policy Act of 1969 (NEPA), Public Law 91-190, Sec. 102(B) and (C), 42 U.S.C. 4332, the National Historic Preservation Act of 1966 (NHPA), Public Law 89-665, 16 U.S.C. 470f and a variety of other environmental and historic preservation laws and Executive Orders (EO) require the Federal government to examine the potential impacts of its proposed actions on communities, public health and

safety, and cultural, historic, and natural resources prior to undertaking those actions. The GPD process of considering these potential impacts is called an environmental and historic preservation (EHP) review which is employed to examine compliance with multiple EHP authorities through one consolidated process. With input from grantees, the EHP Screening Form was revised for clarity and ease of use. The 2013 Screening Form does not require any new information, and includes an appendix with guidance on providing photographs with the EHP submission. Grantees are no longer required to submit floodplain and wetlands maps, or information about the proposed project's relationship to an existing master plan.

**Collection of Information**

*Title:* Environmental and Historic Preservation Screening Form.  
*OMB Number:* 1660-0115.

*Type of Information Collection:* Revision of a currently approved information collection.

*FEMA Forms:* FEMA Form 024-0-1, Environmental and Historic Preservation Screening Form.

*Abstract:* NEPA requires that each Federal agency to examine the impact of its actions (including the actions of grantees using grant funds) on the human environment, to look at potential alternatives to that action, and to inform both decision-makers and the public of those impacts through a transparent process. This Screening Form will facilitate FEMA's review of grantees actions in FEMA's effort to comply with the environmental requirements.

*Affected Public:* State, Local or Tribal Government; not-for-profit institutions.

*Number of Respondents:* 3,000.

*Number of Responses:* 3,000.

*Estimated Total Annual Burden Hours:* 24,000 hours.

**ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS**

Type of respondent	Form name/Form number	No. of respondents	No. of responses per respondent	Total No. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	Environmental and Historic Preservation Screening Form/FEMA Form 024-0-1.	2,800	1	2,800	8 hours	22,400	\$42.10	\$943,040
Not-for-Profit Institutions .....	Environmental and Historic Preservation Screening Form/FEMA Form 024-0-1.	200	1	200	8 hours	1,600	42.10	67,360
<b>Total .....</b>	<b>.....</b>	<b>3,000</b>	<b>.....</b>	<b>3,000</b>	<b>.....</b>	<b>24,000</b>	<b>.....</b>	<b>1,010,400</b>

• **Note:** The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is \$1,010,400.00. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is \$5,394,630.00.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those

who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: May 20, 2013.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2013-12576 Filed 5-24-13; 8:45 am]

**BILLING CODE 9111-19-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID: [FEMA-2013-0020] OMB No. 1660-0114]

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks

comments concerning the information collection activities required to administer the Port Security Grant Program (PSGP).

**DATES:** Comments must be submitted on or before July 29, 2013.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at [www.regulations.gov](http://www.regulations.gov) under Docket ID FEMA-2013-0020. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Washington, DC 20472-3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Hall, Program Manager, FEMA,

Grant Programs Directorate, (202) 786-9778. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646-3347 or email address: [FEMA-Information-Collections-Management@dhs.gov](mailto:FEMA-Information-Collections-Management@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Port Security Grant Program (PSGP) is a DHS grant program that focuses on infrastructure protection activities. The PSGP is one tool in the comprehensive set of measures authorized by Congress and implemented by the Administration to strengthen the Nation's critical infrastructure against risks associated with potential terrorist attacks. The vast bulk of U.S. critical infrastructure is owned and/or operated by State, local and private sector partners. PSGP funds support increased port-wide risk management; enhanced domain awareness; training and exercises; and further capabilities to prevent, detect, respond to, and recover from attacks involving improvised explosive devices (IEDs) and other non-conventional weapons. Section 102 of the Maritime Transportation Security Act of 2002, as amended (46 U.S.C. 70107), established the PSGP to provide for the establishment of a grant program for a risk-based allocation of funds to implement Area Maritime Transportation Security Plans and

facility security plans among port authorities, facility operators, and State and local government agencies required to provide port security services.

**Collection of Information**

*Title:* FEMA Preparedness Grants: Port Security Grant Program (PSGP).  
*OMB Number:* 1660-0114.

*Type of Information Collection:* Revision of a currently approved information collection.

*FEMA Forms:* FEMA Form 089-5, PSGP Investment Justification.

*Abstract:* The PSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments.

*Affected Public:* State, Local or Tribal Government; business or other for-profit.

*Number of Respondents:* 370.

*Number of Responses:* 1,112.

*Estimated Total Annual Burden Hours:* 17,414 hours.

**State Table**

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	PSGP Investment Justification/FEMA Form 089-5.	56	4	224	16	3,584	\$52.91	\$189,629.44
State, Local or Tribal Government.	PSGP—Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA).	4	1	4	2	8	52.91	423.28
<b>Total</b> .....	.....	60	.....	228	.....	3,592	.....	190,052.72

\* Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

**Local Table**

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	PSGP Investment Justification/FEMA Form 089-5.	128	3	384	16	6,144	\$52.91	\$325,079.04
State, Local or Tribal Government.	PSGP—Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA).	17	1	17	2	34	52.91	1,798.94
<b>Total</b> .....	.....	145	.....	401	.....	6,178	.....	326,877.98

\* Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

**Business or Other For-Profit Table**

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
Business or other for-profit ..	PSGP Investment Justification/FEMA Form 089–5.	159	3	477	16	7,632	\$52.91	\$403,809.12
Business or other for-profit ..	PSGP—Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA).	6	1	6	2	12	52.91	634.92
Total .....	.....	165	.....	483	.....	7,644	.....	404,444.04
Grand Total .....	.....	370	.....	1,112	.....	17,414	.....	921,374.74

\* Note: The “Avg. Hourly Wage Rate” for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is \$921,374.74. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is \$897,447.60.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: May 20, 2013.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2013–12580 Filed 5–24–13; 8:45 am]

**BILLING CODE 9111–19–P**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of November 8, 2012.

**DATES: Effective Dates:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on November 8, 2012. The next triennial inspection date will be scheduled for November 2015.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 300 George Street, East Alton, IL 62024, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or

approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. [http://cbp.gov/linkhandler/cgov/trade/basic\\_trade/labs/scientific\\_svcs/commercial\\_gaugers/gaulist.ct.tlgaulist.pdf](http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs/scientific_svcs/commercial_gaugers/gaulist.ct.tlgaulist.pdf).

Dated: May 17, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–12554 Filed 5–24–13; 8:45 am]

**BILLING CODE 9111–14–P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR–5719–N–01]

**Notice of Submission of Proposed Information Collection to OMB; Federal Labor Standards Payee Verification and Payment Processing**

**AGENCY:** Office of Labor Relations, HUD.  
**ACTION:** Notice.

**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. HUD is soliciting public comments on the subject proposal. The information collected by HUD is used to issue refunds to depositors where labor standards discrepancies have been resolved, and to issue wage restitution payments on behalf of construction and maintenance workers who have been underpaid for work performed on HUD-assisted projects subject to prevailing wage requirements.

**DATES:** *Comments Due Date:* July 29, 2013.

**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, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Service (1-800-877-8339).

**FOR FURTHER INFORMATION CONTACT:** Sandra A. Green, Admin. Officer, Office of Labor Relations, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, or *Sandra.A.Green@hud.gov*, telephone (202) 402-5537 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting 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 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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Federal Labor Standards Payee Verification and Payment Processing.

*OMB Control Number, if applicable:* 2501-0021.

*Description of the need for the information and proposed use:* The information collected by HUD is used to issue refunds to depositors where labor standards discrepancies have been resolved, and to issue wage restitution payments on behalf of construction and maintenance workers who have been underpaid for work performed on HUD-assisted projects subject to prevailing wage requirements.

*Agency form numbers, if applicable:* HUD-4734.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 5 hour per year. The number of respondents is 50, the number of responses is 50, the frequency of response is on occasion, and the burden hour per response is 5.

*Status of the proposed information collection:* This is a reinstatement, without change collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended. Jacqueline Roundtree, Acting Director, Office of Labor Relations.

Dated: May 15, 2013.

**Jacqueline W. Roundtree,**  
*Departmental Operations Officer for the Office of Departmental Operations and Coordination.*

[FR Doc. 2013-12603 Filed 5-24-13; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5683-N-38]

### Notice of Submission of Proposed Information Collection to OMB License for the Use of Personally Identifiable Information Protected Under the E-Government Act of 2002, Title V and the Privacy Act of 1974

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* June 27, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528-New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: *OIRA\_Submission@omb.eop.gov* fax: 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh

Street SW., Washington, DC 20410; email *Colette.Pollard@hud.gov*. or telephone (202) 402-3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the HUD has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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, e.g., permitting electronic submission of responses.

*This notice also lists the following information:*

*Title of Proposed:* Information Protected Under the E-Government Act of 2002, Title V and the Privacy Act of 1974.

*OMB Approval Number:* 2528-New.

*Form Numbers:* None.

*Description of the need for the information and proposed use:* HUD has collected and maintains personally identifiable information, the confidentiality of which is protected by the Privacy Act of 1974 (5 U.S.C 522A) and Title V, subtitle A of the E-Government Act of 2002 (CIPSEA) (U.S.C. 3501 note). HUD wishes to make the data available for statistical, research, or evaluation purposes for qualified organizations capable of research and analysis consistent with the statistical, research, or evaluation purposes for which the data were provided or are maintained, but only if the data are used and protected in accordance with the terms and conditions stated in this license (License). Upon receipt of such assurance of qualification and capability, it is hereby agreed between HUD and (Name of the organization to be licensed) that the license be granted.

	Number of respondents	Annual respondents	×	Hours per response	=	Burden hours
Reporting Burden .....	12	1		2.5		30

*Total Estimated Burden Hours: 30.*  
*Status: New collection.*

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 21, 2013.

**Colette Pollard,**

*Department Reports Management Officer,  
 Office of the Chief Information Officer.*

[FR Doc. 2013-12602 Filed 5-24-13; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5683-N-39]

**Notice of Proposed Information Collection for Public Comment; Request Voucher for Grant Payment and Line of Credit Control System (LOCCS) Voice Response System Access**

**AGENCY:** Office of the Chief Financial Officer, 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. HUD is soliciting public comments on the subject proposal. Payment request vouchers for distribution of grant funds using the automated Voice Response System (VRS). An authorization form is submitted to establish access to the voice activated payment system.

**DATES: Comments Due Date:** July 29, 2013.

**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 sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone 202.402.5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Service at (800) 877-8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC; telephone 202 402-3400, for copies of other available documents (this is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** HUD will submit the proposed information collection to the Office of Management and Budget (OMB) for review, as required by the Paper 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; e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title Of Proposal:* Request Voucher for Grant Payment and Line of Credit Control System (LOCCS) Voice Response System Access.

*OMB Control Number:* 2535-0102.

*Description of the need for the information and proposed use:* Payment request vouchers for distribution of grant funds using the automated Voice Response System (VRS). An authorization form is submitted to establish access to the voice activated payment system.

*Agency form number, if applicable:* Form HUD-27054, HUD-27053.

*Members of affected public:* State or Local Government; Public Housing Agencies (PHAs), Individuals or Households.

*Estimation of the Total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD-27053 .....	2,420	115	278,300	0.17	47,311	\$20	\$946,220
HUD-27054 .....	2,420	1	2,420	0.17	411	20	8,220
Total .....					47,722	20	954,440

*Status of the Proposed Information Collection:* Extension of a previously approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 21, 2013.

**Colette Pollard,**

*Departmental Reports Management Officer,  
QDAM.*

[FR Doc. 2013-12599 Filed 5-24-13; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R2-ES-2013-N088;  
FXES1113020000-134-FF02ENEH00]

### Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications; request for public comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. The Act and the National Environmental Policy Act also require that we invite public comment before issuing these permits.

**DATES:** To ensure consideration, written comments must be received on or before June 27, 2013.

**ADDRESSES:** Marty Tuegel, Section 10 Coordinator, by U.S. mail at Division of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103 at 505-248-6920. Please refer to the respective permit number for each application when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; 505-248-6651.

#### SUPPLEMENTARY INFORMATION:

#### Public Availability of Comments

The Act (16 U.S.C. 1531 et seq.) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite

public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

#### Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE-123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

#### Permit TE-041875

*Applicant:* John Koprowski, Tucson, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of, capture, ear tag, radio collar, and monitor Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*) within the Pinaleño Mountains, Graham County, Arizona.

#### Permit TE-143922

*Applicant:* Texas Environmental Studies and Analysis, LLC., Kingsville, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus*), northern aplomado falcon (*Falco femoralis septentrionalis*), interior least tern (*Sterna antillarum athalassos*), and red-cockaded woodpecker (*Picoides borealis*) within Texas.

#### Permit TE-834782

*Applicant:* Westland Resources, Inc., Tucson, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of Sonora tiger salamander (*Ambystoma tigrinum stebbinsi*) within Arizona.

#### Permit TE-106555

*Applicant:* Clay Fischer, Austin, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species in Texas:

- Black-capped vireo (*Vireo atricapilla*)
- Golden-cheeked warbler (*Dendroica chrysoparia*)
- Jaguarundi (*Herpailurus yagouaroundi*)
- Houston toad (*Bufo houstonensis*)
- Ocelot (*Leopardus pardalis*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)

#### Permit TE-038055

*Applicant:* University of New Mexico, Albuquerque, New Mexico.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of Rio Grande silvery minnow (*Hybognathus amarus*), spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*) within New Mexico.

#### Permit TE-038055

*Applicant:* K-9 University, LLC, Oklahoma City, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) using trained canines within Oklahoma.

#### Permit TE-036912

*Applicant:* Tohono O'odham Nation, Sells, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct scat collection, analysis, and tracking for jaguar (*Panthera onca*), jaguarundi (*Herpailurus yagouaroundi*), and ocelot (*Leopardus pardalis*) within Pima County, Tohono O'odham Nation, Arizona.

#### Permit TE-03766B

*Applicant:* Marron and Associates, Albuquerque, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus*).

#### National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 et seq.), we have made an initial determination that the proposed activities in these permits are categorically excluded from the

requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

#### Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the ADDRESSES section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: May 10, 2013.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2013-12616 Filed 5-24-13; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Notice of Availability of the Draft Environmental Impact Statement and Notice of Public Meetings for the Newlands Project Resource Management Plan

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation has made available for public review and comment, the Draft Resource Management Plan (RMP)/Draft Environmental Impact Statement (DEIS) for the Newlands Project. This RMP/DEIS provides a range of alternatives for managing Reclamation-administered lands in the Newlands Project Planning Area, which is in the west-central Nevada counties of Washoe, Storey, Lyon, and Churchill.

**DATES:** Submit written comments on the RMP/DEIS on or before July 29, 2013.

Reclamation will hold two public open house meetings to provide information and receive comments on the RMP/DEIS:

- Tuesday, June 18, 2013, 3:00 p.m.–7:00 p.m., Fallon, NV

- Wednesday, June 19, 2013, 4:00 p.m.–7:00 p.m., Reno, NV

**ADDRESSES:** Please send written comments to Mr. Bob Edwards, RMP Project Manager, Bureau of Reclamation, 705 N. Plaza Street, Room 320, Carson City, NV 89701; via fax at 775-882-7592; or by email to [redwards@usbr.gov](mailto:redwards@usbr.gov). Written comments also may be submitted during the public meetings.

The public meetings will be held at the following locations:

- Fallon at Churchill County Commission Chambers, 155 N. Taylor Street, Suite 110, Fallon, NV 89406
- Reno at Hyatt Place Reno-Tahoe Airport, 1790 East Plumb Lane, Reno, NV 89502

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Edwards at 775-884-8342. The RMP/DEIS will be available from the following Web site: [http://www.usbr.gov/mp/nepa/nepa\\_projdetails.cfm?Project\\_ID=2822](http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=2822). See the

**SUPPLEMENTARY INFORMATION** section for locations where copies of the RMP/DEIS are available for public review.

**SUPPLEMENTARY INFORMATION:** The Newlands Project provides irrigation water from the Truckee and Carson Rivers for cropland in the Lahontan Valley near Fallon and benchlands near Fernley in western Nevada through a series of diversions, canals, dams, and reservoirs. The Newlands Project Planning Area encompasses approximately 442,000 acres surrounding the Newlands Project facilities and is composed of all Reclamation-administered lands, including water bodies, managed as part of the Newlands Project.

The Newlands Project lands have been administered to date in accordance with applicable directives and standards. The purpose of the Newlands Project RMP is to provide a single, comprehensive land use plan that will guide contemporary resource and recreation needs of the Federal lands administered by Bureau of Reclamation (Reclamation) in the Newlands Project planning area. The RMP will help support the Newlands Project's authorized purposes: Water supply, recreation, water quality, support of fish and wildlife, and any other purposes recognized as beneficial under the laws of Nevada.

This RMP addresses the use of Federal lands administered by Reclamation in the planning areas that are ancillary to the primary purpose of providing water for irrigation. The water resource itself and the facilities and infrastructure used to transport and store water are excluded from this RMP/DEIS.

This RMP/DEIS addresses the interrelationships among the various resources in the Newlands Project Planning Area and provides management options to balance resource management between Reclamation's mission and authority, and the needs of the public to use these lands. Reclamation's authority to prepare the RMP is outlined in the Reclamation Recreation Management Act of 1992 (Pub. L. 102-575, Title 28).

The purposes of the Newlands Project RMP are as follows:

- Provide a framework to ensure Reclamation plans and activities comply with all appropriate federal, state, and local laws, rules, regulations, and policies;
- Provide for the protection and management of natural and cultural resources and public health and safety;
- Provide for non-water based recreation management and development and other uses consistent with contemporary and professional resource management and protection theories, concepts, and practices; and
- Be consistent with Reclamation's fiscal goals and objectives.

The RMP is needed because no unifying management plan exists to guide Reclamation in achieving the demands listed above.

#### Draft Resource Management Plan

Three management alternatives were developed to address the major planning issues. Each alternative provides direction for resource programs based on the development of specific goals and management actions. Each alternative describes specific issues influencing land management and emphasizes a different combination of resource uses, allocations, and restoration measures to address issues and resolve conflicts among users. Resource program goals are met in varying degrees across alternatives. Management scenarios for programs not tied to major planning issues or mandated by laws and regulations often contain few or no differences in management between alternatives.

The alternatives vary in the degree to which activities are allowed or restricted, the amount of access allowed for activities, and the amount of mitigation or restoration required for authorized activities. Grazing is where the alternatives differ the most and was of most interest to the public during scoping.

Copies of the RMP/DEIS are available for public review at the following locations:

- Washoe County Library, Fernley Branch Lyon County Library, and the Churchill County Library
- Natural Resources Library, Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240
- Bureau of Reclamation, Lahontan Basin Area Office, 705 N. Plaza Street, Room 320, Carson City, NV
- Mid-Pacific Regional Library, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825

### Special Assistance for Public Meetings

If special assistance is required to participate in the above public meeting, please contact Mr. Bob Edwards at 775-884-8342, or by email at [redwards@usbr.gov](mailto:redwards@usbr.gov). Please notify Mr. Edwards as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 775-882-3436.

### Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 10, 2013.

**Pablo R. Arroyave,**

*Deputy Regional Director, Mid-Pacific Region.*

[FR Doc. 2013-12622 Filed 5-24-13; 8:45 am]

**BILLING CODE 4310-MN-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. John Thomas Byrd*, Civil Action No. 4:12-cv-53-BO, was lodged with the United States District Court for the Eastern District of North Carolina, Eastern Division, on May 6, 2013.

This proposed Consent Decree concerns a complaint filed by the United States against John Thomas Byrd, pursuant to Section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendant for

violating the Clean Water Act by discharging pollutants into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore impacted areas and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Martin F. McDermott, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, P.O. Box 7611, Washington, DC 20044 and refer to *United States v. John Thomas Byrd*, DJ #90-5-1-1-19320.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of North Carolina, 310 New Bern Avenue, Raleigh, NC 27601, or any other Clerk's Office in the Eastern District of North Carolina, with the exception of Elizabeth City. In addition, the proposed Consent Decree may be examined electronically at [http://www.justice.gov/enrd/Consent\\_Decrees.html](http://www.justice.gov/enrd/Consent_Decrees.html).

**Cherie L. Rogers,**

*Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.*

[FR Doc. 2013-12518 Filed 5-24-13; 8:45 am]

**BILLING CODE 4410-CW-P**

## DEPARTMENT OF JUSTICE

### Notice of Proposed Joint Stipulation to Consent Decree Entered Into Pursuant to the Comprehensive Environmental Response, Compensation And Liability Act

Notice is hereby given that on May 17, 2013, a proposed joint stipulation to an entered Consent Decree filed in *United States et al. v. ITT Industries, Inc., et al.*, Civil Action No. 99-00552 was lodged with the United States District Court for the Central District of California (Western Division).

On August 2, 2000, the parties to the civil action, including the United States, the State of California, on behalf of the California Department of Toxic Substances Control, the City of Glendale, and several potentially responsible parties, entered into a Consent Decree settlement, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, which resolved the filed claims of the federal and state governments for the Glendale North and South Operable Units of the San Fernando Valley (Area

2) Superfund Site (Site). Pursuant to the consent decree, certain of the potentially responsible parties (Settling Work Defendants) have been performing and are performing Site remedial actions (Work) required by the consent decree, including, among other actions, a Focused Feasibility Study (FFS).

The parties have reached a proposed joint stipulation that the Settling Work Defendants will not request a Certificate of Completion regarding the Work before November 30, 2018 and, Settling Work Defendants and the City of Glendale shall continue to perform their respective Work required to be performed under the Consent Decree and other requirements of the Consent Decree, including the Performance Standards, FFS and any implementation of Work resulting therefrom, now and into the future until at least November 30, 2018, when additional Site information will be available to the parties, subject in all instances to the terms and applicable conditions set forth in the Consent Decree, and without waiving any rights, defenses and/or remedies that the Plaintiffs, the City of Glendale, or Settling Work Defendants have under the Consent Decree (it being agreed that the implementation Work resulting from the FFS has not yet been determined, and the Settling Work Defendants and/or the City shall be entitled to exercise any and all rights, defenses and remedies under the Consent Decree to object to any implementation of Work that may be ordered by the United States under the Consent Decree).

The publication of this notice opens a period for public comment on the proposed joint stipulation. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al. v. ITT Industries, Inc., et al.*, Civil Action No. 99-00552, D.J. Ref. No. 90-11-2-442A. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email ...	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the Stipulation may be examined and downloaded at this Justice Department Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). We will provide

a paper copy of the Stipulation upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$4.00 (25 cents per page reproduction cost) payable to the United States Treasury.

**Henry S. Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2013–12521 Filed 5–24–13; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Members of SGIP 2.0, Inc.

Notice is hereby given that, on April 26, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Members of SGIP 2.0, Inc. (“MSGIP 2.0”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Public Utilities Commission of Ohio, Columbus, OH; Taiwan Smart Grid Industry Association (TSGIA), Taipei City, TAIWAN; Z-Wave Alliance, Milpitas, CA; Nuclear Regulatory Commission, Rockville, MD; Intel Corporation, Hillsboro, OR; Tennessee Valley Authority, Chattanooga, TN; MISO, Carmel, IN; Underwriters Laboratories, Inc., Northbrook, IL; Nexans, Bethel, CT; Telecommunications Industry Association, Arlington, VA; Microsoft Corporation, Redmond, WA; Stroz Freidberg, LLC, New York, NY; Cisco Systems, Inc., Boxborough, MA; Elster Solutions, Raleigh, NC; Federal Energy Regulatory Commission, Washington, DC; OpenADR Alliance, Morgan Hill, CA; Public Service Electric and Gas Company (PSE&G), Newark, NJ; SAE International, Troy, MI; QualityLogic, Inc., Moorpark, CA; Emerson Electric Co., St. Louis, MO; Virginia State Corporation Commission, Richmond, VA; Ambient Corporation, Newton, MA; FutureDOS, Calgary, Alberta, CANADA; Opower, Arlington, VA; CSA Group, Toronto, Ontario, CANADA; Greater Sudbury Hydro Inc., Sudbury, Ontario, CANADA; Lockheed Martin, Gaithersburg, MD; National Association of Regulatory Utility Commissioners (NARUC), Washington, DC; Xanthus Consulting International, Boulder Creek, CA; Xcel Energy Inc., Denver, CO; Carnegie Mellon University, Pittsburgh, PA; e-Radio United States Inc., Redwood, CA; Ericsson Inc., Town of Mount Royal, Quebec, CANADA; GridWise Alliance, Washington, DC; Verizon Communications, Basking Ridge, NJ; Alcatraz Energy, Boulder, CO; Grid Net, San Francisco, CA; LonMark International, San Jose, CA; Modbus Organization, Inc., Hopkinton, MA; PowerGrid360, San Jose, CA; RCES Center from University of Texas at El Paso, El Paso, TX; Tacoma Power, Tacoma, WA; TUV Rheinland of North America, Pleasanton, CA; Washington Laboratories, Gaithersburg, MD; International Business Machines Corporation (IBM), Yorktown Heights, NY; ABB Inc., Raleigh, NC; ARC Informatique, Sevres, FRANCE; BC Hydro, Vancouver, British Columbia, CANADA; Duke Energy, Charlotte, NC; IE Technologies, Windsor, CO; Milbank Manufacturing Co., Kansas City, MO; NovaTech LLC, Quakertown, PA; Quadlogic Controls Corp., Long Island City, NY; Kyocera Telecommunications Research Center (KTRC), Fremont, CA; Air Conditioning, Heating & Refrigeration Institute, Arlington, VA; Gas Technology Institute, Des Plaines, IL; HD–PLC Alliance, Fukuoka, JAPAN; TeMix Inc., Los Altos, CA; The International Society of Automation (ISA), Research Triangle Park, NC; Controlco, Oakland, CA; Cox Software Architects LLC, Summit, NJ; Aclara Technologies, LLC, Hazelwood, MO; IEEE Standards Association, Piscataway, NJ; Lutron Electronics Co., Inc., Coopersburg, PA; OakTree Consulting, Austin, TX; Patrick M. Duggan Enterprises, Inc., Valley Cottage, NY; Smart Grid Operations Consulting, Sunnyvale, CA; SmartGrid Network, Chicago, IL; Tansy Energy Network, Scott Valley, CA; Tata Consultancy Services Limited, Mumbai, INDIA; TC9, Inc., Pittsboro, NC; NEC Laboratories America, Cupertino, CA; Public Utility Commission of Texas, Austin, TX; Rebecca Herold and Associates, Van Meter, IA; UCA International Users Group, Raleigh, NC; Yokogawa Electric Corporation, Tokyo, JAPAN; Facilities Electrical Consulting Services, Easton, PA; Metatech Corporation, Goleta, CA; Amzur Technologies, Inc., Tampa, FL; Reef Energy Systems, LLC, Danville, CA; Duquesne Light Company, Pittsburgh, PA; Reilly Associates, Red Bank, NJ; and

MidAmerican Energy Company, Davenport, IA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSGIP 2.0 intends to file additional written notifications disclosing all changes in membership.

On February 5, 2013, MSGIP 2.0 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2013 (78 FR 14836).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2013–12483 Filed 5–24–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

#### Bureau of Labor Statistics Technical Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Technical Advisory Committee will meet on Friday, June 21, 2013. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Committee provides advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of the collection and formulation of economic measures. The BLS presents issues and then draws on the expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics, and survey design.

The meeting will be held in Rooms 1 and 2 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

- 8:30 a.m. Opening remarks and introductions; agency update
- 9:00 a.m. How to take account of Internet job search in measuring unemployment in the CPS
- 10:45 a.m. Estimating actuarial values for the “generosity” of employer provided health insurance plans
- 1:45 p.m. Discussion of future priorities
- 2:15 p.m. Estimating non-production and supervisory worker hours for productivity measurement
- 4:00 p.m. Approximate conclusion

The meeting is open to the public. Any questions concerning the meeting

should be directed to Lisa Fieldhouse, Bureau of Labor Statistics Technical Advisory Committee, on 202-691-5025. Individuals who require special accommodations should contact Ms. Fieldhouse at least two days prior to the meeting date.

Signed at Washington, DC, this 16 day of May 2013.

**Eric Molina,**

*Acting Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 2013-12574 Filed 5-24-13; 8:45 am]

**BILLING CODE P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### Notice of Intent To Audit

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Public notice.

**SUMMARY:** The Copyright Royalty Judges are announcing receipt of two notices of intent to audit the 2010, 2011, and 2012 statements of account submitted by Saga Communications, Inc. and Cumulus Media, Inc., concerning the royalty payments made by each pursuant to two statutory licenses.

**FOR FURTHER INFORMATION CONTACT:** LaKeshia Keys, Program Specialist, by telephone at (202) 707-7658 or email at [crb@loc.gov](mailto:crb@loc.gov).

**SUMMARY INFORMATION:** The Copyright Act, title 17 of the United States Code, grants to copyright owners of sound recordings the exclusive right to perform publicly sound recordings by means of certain digital audio transmissions, subject to certain limitations. Specifically, this right is limited by two statutory licenses. The section 114 license allows the public performance of sound recordings by means of digital audio transmissions by nonexempt noninteractive digital subscription services and eligible nonsubscription services. 17 U.S.C. 114(f). The second license allows a service to make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are set forth in 37 CFR part 380. As part of the terms set for these licenses, the Judges designated SoundExchange, Inc., as the organization charged with collecting the royalty payments and statements of

account submitted by eligible nonsubscription services under the section 112 and 114 licenses. 37 CFR 380.13(b)(1). As the designated Collective, SoundExchange may conduct a single audit of a licensee for any calendar year for the purpose of verifying their royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and serve the notice on the licensee to be audited. 37 CFR 380.15(c).

On May 10, 2013, SoundExchange filed with the Judges separate notices of intent to audit Cumulus Media Inc. and Saga Communications, Inc. for the years 2010, 2011, and 2012. Section 380.15(c) requires the Judges to publish a notice in the **Federal Register** within 30 days of receipt of the notice announcing the Collective's intent to conduct an audit.

In accordance with § 380.15(c), the Copyright Royalty Judges are publishing today's notice to fulfill this requirement with respect to SoundExchange's respective notices of intent to audit Cumulus Media Inc. and Saga Communications, Inc., each filed May 10, 2013.

Dated: May 21, 2013.

**Suzanne M. Burnett,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2013-12490 Filed 5-24-13; 8:45 am]

**BILLING CODE 1410-72-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13-061]

### NASA Applied Sciences Advisory Committee Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Applied Sciences Advisory Committee (ASAC). This Committee functions in an advisory capacity to the Director, Earth Science Division. The meeting will be held for the purpose of soliciting, from the applied sciences community and other persons, scientific and technical information relevant to program planning.

**DATES:** Thursday, June 20, 2013, 1:00 p.m. to 4:00 p.m., Local Time.

**ADDRESSES:** This meeting will take place telephonically and by Adobe Connect. Any interested person may call the USA toll free conference call number 800-

779-5797 pass code ASAC, to participate in this meeting by telephone. The Adobe Connect link is <https://connect.arc.nasa.gov/asac>. Enter as a guest using your name.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Meister, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-1557, fax (202) 358-4118, or [peter.g.meister@nasa.gov](mailto:peter.g.meister@nasa.gov).

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes the following topics:

- Applied Sciences Program Update
- Overview of 2014 Budget
- Highlight from Earth Science Division Senior Review

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2013-12470 Filed 5-24-13; 8:45 am]

**BILLING CODE 7510-13-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 13-060]

### NASA Asteroid Initiative Call for Ideas

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Public Forum.

**SUMMARY:** The National Aeronautics and Space Administration announces a public forum to provide a status on the agency's asteroid initiative planning and to encourage feedback and ideas from the global community and the public.

**DATES:** Tuesday, June 18, 2013, 9:15 a.m.-12:00 p.m. EDT.

*Location:* James E. Webb Auditorium.

**ADDRESSES:** NASA Headquarters, 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Jason Kessler, 202-358-1107.

**SUPPLEMENTARY INFORMATION:**

- This meeting will be streamed live online. Viewing options will be posted at [www.nasa.gov/asteroid](http://www.nasa.gov/asteroid) prior to the event.

- The agenda for this meeting includes the following topics:

9:15-9:30 Welcome—Deputy Administrator Garver

9:30-9:55 White House Perspective—Tom Kalil

9:55-10:15 Asteroid Initiative—Associate Administrator Lightfoot

10:15–10:35 Target Identification and Planetary Defense—Dr. John Grunsfeld  
 10:35–10:50 Mission—Technology Approach—Mike Gazarik  
 10:50–11:05 Mission—Human Exploration—William Gerstenmaier  
 11:05–11:20 Extensibility—Steve Stich  
 11:20–11:35 Partnership and Innovative Methods—Mason Peck  
 11:35–11:50 Summer Engagement Calendar—TBD

This forum will be open to the public up to the seating capacity of the room.

Attendees should enter the west lobby doors of the NASA Headquarters building at 300 E Street SW., Washington, DC. Upon arrival, all participants will be required to check in at the registration table located in the lobby and show photo identification.

#### Registration

Individuals who plan to attend the Asteroid Initiative Forum must register online. Due to capacity limitations, a maximum of 150 registrations will be accepted. Those who intend to watch the live web stream are also encouraged to register as a virtual participant. Registration will be available starting Tuesday, May 28: [www.nasa.gov/asteroid](http://www.nasa.gov/asteroid).

#### Check In

Any individuals who have registered to attend the Asteroid Initiative Forum should enter the west lobby doors of the NASA Headquarters building at 300 E Street SW., Washington, DC. Upon arrival, all participants will be required to check in at the registration table located in the lobby and show photo identification.

#### Press

News media interested in attending are required to pre-register and should contact Sarah Becky Ramsey at 202–358–1694 for additional information.

#### Security

Event attendees will not be required to check in at the security desk to obtain a visitor's badge. However, participants will be subject to personal inspection (e.g., passing through a metal detector), prior to entering the auditorium.

#### Directions

Directions to NASA Headquarters are available online at the following URL: <http://www.nasa.gov/centers/hq/about/map.html>.

#### Driving

Parking lots are located near the NASA Headquarters building. Check the

local yellow pages or Internet for exact locations.

#### Metro

Metro stops nearest NASA Headquarters are L'Enfant Plaza (orange, blue, yellow, and green lines) and Federal Center SW (orange and blue lines).

From L'Enfant Plaza station, take the Department of Transportation exit and turn left at the top of the escalators. Head east (on School St. or E St. SW.) and south (on 4th or 6th St. SW.) to arrive at the west entrance of the NASA building near the corner of E St. SW. and 4th St. SW.

From the exit of the Federal Center SW metro station, head south on 3rd St. SW and then west on E St. SW. to arrive at the west entrance of the NASA building near the corner of E St. SW. and 4th St. SW.

#### William Gerstenmaier,

*Associate Administrator, Human Exploration & Operations Mission Directorate.*

[FR Doc. 2013–12547 Filed 5–24–13; 8:45 am]

BILLING CODE 7510–13–P

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: CCI Phase II Panel, #1191

Date and Time: June 10, 2013, 8:30 a.m.–5:30 p.m.; June 11, 2013 8:30 a.m.–2:00 p.m.

Place: National Science Foundation, 4021 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Part-open.

Contact Person: Zeev Rosenzweig, Program Director, Centers for Chemical Innovation Program, Division of Chemistry, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–7719.

To help facilitate your entry into the building, please contact the individual listed above. Your request to attend this meeting should be received by email ([zrosenzw@nsf.gov](mailto:zrosenzw@nsf.gov)) on or prior to June 6, 2013.

Purpose of Meeting: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda:

## Monday, June 10, 2013

8:30 a.m.–9:30 a.m. Closed—Panel Briefing -

9:30 a.m.–12:30 a.m.–1 Open—Center Presentation and Poster Session, Stafford I, Room 1235

12:30 a.m.–5:30 p.m. Closed—Panel Briefing, Discussions, Drafting Summary: -

## Tuesday, June 11, 2013

8:00 a.m.–1:00 p.m. Closed—Panel Briefing Formulating Recommendation and Finalizing the Panel Summary -

Reason for Closing: The meeting is closed to the public because the Panel will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552(b)(4) and (6) of the Government Sunshine Act would be improperly disclosed.

Dated: May 21, 2013.

#### Susanne Bolton,

*Committee Management Officer.*

[FR Doc. 2013–12481 Filed 5–24–13; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

[NRC–2013–0105]

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

#### Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 2, 2013 to May 15, 2013. The last biweekly notice was published on May 14, 2013 (78 FR 28248).

**ADDRESSES:** You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0105. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

- *Fax comments to:* RADB at 301-492-3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Accessing Information and Submitting Comments**

##### *A. Accessing Information*

Please refer to Docket ID NRC-2013-0105 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, by the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0105.

- *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). Documents may be viewed in ADAMS by performing a search on the document date and docket number.

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

##### *B. Submitting Comments*

Please include Docket ID NRC-2013-0105 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at <http://www.regulations.gov> as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

#### **Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Section 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of

publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held

would take place before the issuance of any amendment.

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, 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. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. 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.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii)

the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

*Calvert Cliffs Nuclear Power Plant, LLC, the licensee, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland*

*Date of amendments request:* January 28, 2013, as supplemented by letter dated April 1, 2013.

*Description of amendments request:* The amendment would revise several Technical Specification (TS) to eliminate the second completion time by adopting TS Task Force (TSTF)-439-A, Revision 2, "Eliminate Second Completion Times Limiting Time from Discovery of Failure to Meet an LCO [limiting condition for operation]."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The change proposed by incorporating TSTF-439-A, Revision 2, eliminates certain Completion Times from the [TSs]. Completion Times are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident during the revised Completion Times are no different than the consequences of the same accident during the existing Completion Times. As a result, the consequences of an accident previously evaluated are not affected by this change. The proposed change does not alter or prevent the ability of structures, systems, or components

from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed change to modify certain Completion Times does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase the cumulative occupational/public radiation exposures. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed changes do not alter any assumptions made in the safety analysis.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to delete the second Completion Time and the related example of second Completion Times does not alter the manner in which safety limits, limiting safety system settings or [LCOs] are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside of the design basis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Steven L. Miller, General Counsel, Constellation Energy Nuclear Group, LLC., 100 Constellation Way, Suite 200c, Baltimore, MD 21202.

*NRC Acting Branch Chief:* Sean Meighan.

*Carolina Power and Light Company, Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina*

*Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina*

*Carolina Power & Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina*

*Date of amendment request:* April 20, 2013.

*Description of amendment request:* The proposed change would revise the corporate name of the licensee in each facility's operating license from Carolina Power & Light Company to Duke Energy Progress, Inc.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendments involve a change of the corporate name of Carolina Power & Light Company to Duke Energy Progress, Inc. The proposed amendments do not involve any change in the technical qualifications of the licensee or the plant's design, configuration, or operation. All Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications remain unchanged. Also, the physical security plan and related plans, the operator training and requalification program, the quality assurance program, and the emergency plan will not be materially changed by the proposed corporate name change. The corporate name change amendments will not affect the executive oversight provided by the Chief Nuclear Officer and his staff.

Therefore, the proposed amendments do not involve any increase in the probability or consequences of an accident previously analyzed.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

The proposed amendments do not involve any change in the plant's design, configuration, or operation. The current plant design, design bases, and plant safety analysis will remain the same.

The Limiting Conditions for Operations, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications are not affected by the proposed corporate name change. As such, the plant conditions for which the design basis accident analysis was performed remain valid.

The proposed amendments do not introduce a new mode of plant operation or new accident precursors, do not involve any physical alterations to the plant's configuration, or make changes to system setpoints that could initiate a new or different kind of accident.

Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

The proposed amendments do not involve a change in the plant's design, configuration, or operation. The proposed amendments affect neither the way in which the plant's structures, systems, and components perform their safety function nor its design and licensing bases.

Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Because there is no change to the physical design of the plant, there is no change to any of these margins.

Therefore, the proposed amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, 550 South Tryon Street, M/C DEC45A, Charlotte, North Carolina 28202.

*NRC Branch Chief:* Jessie F. Quichocho.

*Florida Power and Light Company, Docket No. 50-250, Turkey Point Nuclear Plant, Unit 3, Miami-Dade County, Florida*

*Date of amendment request:* March 8, 2013.

*Description of amendment request:* The license amendment request proposes a one-time (temporary) extension of Technical Specification (TS) Surveillance Requirement 4.5.1.1.d involving an operability demonstration of emergency core cooling system (ECCS) accumulator check valves. The requested surveillance extension will allow 2 months more than the currently specified refueling outage interval of 18 months plus 4.5-month grace period and facilitate the plant's ability to optimize fuel burn-up during the current operating cycle.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The requested action is a one-time extension to the performance interval of one TS surveillance requirement. The performance of the surveillance, or the failure to perform the surveillance, is not a precursor to an accident. Performing the surveillance or failing to perform the surveillance does not affect the probability of an accident. Therefore, the proposed delays in performance of the surveillance requirement in this amendment request does not increase the probability of an accident previously evaluated.

A delay in performing the surveillance does not result in a system being unable to perform its required function. In the case of this one-time extension request, the relatively short period of additional time that the system and components will be in service before the next performance of the surveillance will not affect the ability of the system to operate as designed noting that no time-dependent failure modes have been identified for the subject check valves.

The ECCS accumulators will remain capable of performing their required safety function. No new failure modes have been introduced because of this action, and the consequences remain consistent with previously evaluated accidents. Therefore, the proposed delay in the performance of the surveillance requirement in this amendment request does not involve a significant increase in the consequences of an accident.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve a physical alteration of any system, structure, or component (SSC) or a change in the way any SSC is operated. The proposed amendment does not involve operation of any SSC in a manner or configuration different from those previously recognized or evaluated. The subject check valves do not have any time-dependent failure modes and no new failure mechanisms will be introduced by the one-time surveillance extension being requested.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The proposed amendment is a one-time extension of the performance interval for one TS surveillance requirement. Extending the surveillance requirement does not involve a modification of any TS Limiting Condition for Operation. Extending the surveillance frequency does not involve a change to any limit on accident consequences specified in

the license or regulations. Extending the surveillance frequency does not involve a change to how accidents are mitigated or a significant increase in the consequences of an accident. Extending the surveillance frequency does not involve a change in a methodology used to evaluate consequences of an accident. Extending the surveillance frequency does not involve a change in any operating procedure or process.

The components involved in this request have exhibited reliable operation based on the results of past 18-month surveillance tests over the last six refueling outages. Based on the limited additional period of time that the systems and components will be in service before the surveillances are next performed, as well as the operating experience that indicates this surveillance has been successful when performed, it is reasonable to conclude that any margin of safety associated with the surveillance requirement will not be affected by the requested extension.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* James Petro, Managing Attorney—Nuclear, Florida Power & Light Company, P.O. Box 14000, Juno Beach, Florida 33408–0420.  
*NRC Branch Chief:* Jessie F. Quichocho.

*NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa*

*Date of amendment request:* March 14, 2013

*Description of amendment request:* The proposed amendment would modify the Technical Specifications (TS) definition of “Shutdown Margin” (SDM) to adopt TSTF–535, “Revise Shutdown Margin Definition to Address Advanced Fuel Designs”, which would require calculation of the SDM at a reactor moderator temperature of 68°F or a higher temperature that represents the most reactive state throughout the operating cycle.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the definition of SDM. SDM is not an initiator to any accident previously evaluated. Accordingly, the proposed change to the definition of SDM has no effect on the probability of any accident previously evaluated. SDM is an assumption in the analysis of some previously evaluated accidents and inadequate SDM could lead to an increase in consequences for those accidents. However, the proposed change revises the SDM definition to ensure that the correct SDM is determined for all fuel types at all times during the fuel cycle. As a result, the proposed change does not adversely affect the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the definition of SDM. The change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The change does not alter assumptions made in the safety analysis regarding SDM.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the definition of SDM. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change ensures that the SDM assumed in determining safety limits, limiting safety system settings or limiting conditions for operation is correct for all BWR fuel types at all times during the fuel cycle.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. James Petro, P.O. Box 14000, Juno Beach, FL 33408–0420.

*NRC Branch Chief:* Robert D. Carlson.

*South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina*

*Date of amendment request:* April 2, 2013.

*Description of amendment request:* The proposed amendment would revise related Technical Specification (TS) surveillance requirements (SRs) for snubbers to conform to planned revisions of the snubber inservice inspection (ISI) program.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes would revise SR 4.7.7 to conform the TS to the revised ISI program for snubbers. Snubber examination, testing and service life monitoring will continue to meet the requirements of 10 CFR 50.55a(g). Snubber examination, testing and service life monitoring is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. Snubbers will continue to be demonstrated OPERABLE by performance of a program for examination, testing and service life monitoring in compliance with 10 CFR 50.55a or authorized alternatives. The proposed change to TS ACTION 3.7.7 for inoperable snubbers is administrative in nature and is required for consistency with the proposed change to SR 4.7.7. The proposed change does not adversely affect plant operations, design functions or analyses that verify the capability of systems, structures, and components to perform their design functions.

Therefore, the consequences of accidents previously evaluated are not significantly increased. Based on the above, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve any physical alteration of plant equipment. The proposed changes do not alter the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes ensure snubber examination, testing and service life monitoring will continue to meet the

requirements of 10 CFR 50.55a(g). Snubbers will continue to be demonstrated OPERABLE by performance of a program for examination, testing and service life monitoring in compliance with 10 CFR 50.55a or authorized alternatives. The proposed change to TS ACTION 3.7.7 for inoperable snubbers is administrative in nature and is required for consistency with the proposed change to SR 4.7.7.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

*NRC Branch Chief:* Robert J. Pascarelli.

*South Carolina Electric and Gas Docket Nos.: 52-027 and 52-028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina*

*Date of amendment request:* March 13, 2013.

*Description of amendment request:* The proposed change would amend Combined License Nos.: NPF-93 and NPF-94 for Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3 by departing from the plant-specific design control document Tier 2\* material by revising reference document APP-OCS-GEH-320, "AP1000 Human Factors Engineering Integrated System Validation Plan" from Revision D to Revision 2. APP-OCS-GEH-320 is incorporated by reference in the updated final safety analysis report (UFSAR) as a means to implement the activities associated with the human factors engineering verification and validation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Integrated System Validation (ISV) provides a comprehensive human performance-based assessment of the design of the AP1000 Human-System Interface (HSI) resources, based on their realistic operation

within a simulator-driven Main Control Room (MCR). The ISV is part of the overall AP1000 Human Factors Engineering (HFE) program. The changes are to the ISV Plan to clarify the scope and amend the details of the methodology. The ISV Plan is needed to perform, in the simulator, the scenarios described in the document. The functions and tasks allocated to plant personnel can still be accomplished after the proposed changes. The performance of the tests governed by the ISV Plan provides additional assurances that the operators can appropriately respond to plant transients. The ISV Plan does not affect the plant itself. Changing the ISV Plan does not affect prevention and mitigation of abnormal events, e.g., accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. No safety-related structure, system, component (SSC) or function is adversely affected. The changes do not involve nor interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the UFSAR are not affected. Because the changes do not involve any safety-related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes to the ISV Plan affect the testing and validation of the Main Control Room and Human System Interface using a plant simulator. Therefore, the changes do not affect the safety-related equipment itself, nor do they affect equipment which, if it failed, could initiate an accident or a failure of a fission product barrier. No analysis is adversely affected. No system or design function or equipment qualification will be adversely affected by the changes. This activity will not allow for a new fission product release path, nor will it result in a new fission product barrier failure mode, nor create a new sequence of events that would result in significant fuel cladding failures. In addition, the changes do not result in a new failure mode, malfunction or sequence of events that could affect safety or safety-related equipment.

Therefore, this activity does not create the possibility of a new or different kind of accident than any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The changes to the ISV Plan affect the testing and validation of the Main Control Room and Human System Interface using a plant simulator. Therefore, the changes do not affect the assessments or the plant itself. These changes do not affect safety-related equipment or equipment whose failure could initiate an accident, nor does it adversely interface with safety-related equipment or fission product barriers. No safety analysis or

design basis acceptance limit/criterion is challenged or exceeded by the requested change.

Therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius, LLC., 1111 Pennsylvania Avenue NW., Washington, DC 20004-2514.

*NRC Acting Branch Chief:* Lawrence Burkhart.

### Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room

(PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

*Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan*

*Date of application for amendment:* November 13, 2012.

*Brief description of amendment:* The amendment revises surveillance requirements (SRs) which currently require operating the ventilation system for at least 10 continuous hours with the heaters operating every 31 days for SR 3.6.4.3.1 and 31 days on a staggered test basis for SR 3.7.3.1. The SRs would be changed to require at least 15 continuous minutes of ventilation system operation every 31 days and include technical specification (TS) bases changes that summarize and clarify the purpose of the TS in accordance with TS Task Force Traveler (TSTF) 522, "Revise Ventilation System Surveillance Requirements to operate for 10 Hours per Month."

*Date of issuance:* May 13, 2013.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 192.

*Facility Operating License No. NPF–43:* Amendment revised the Technical Specifications and License.

*Date of initial notice in Federal Register:* January 22, 2013 (78 FR 4471).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 2013.

*No significant hazards consideration comments received:* No.

*FirstEnergy Nuclear Operating Company (FENOC), et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1 (PNPP), Lake County, Ohio*

*Date of amendment request:* September 5, 2012.

*Description of amendment request:* The proposed amendment would modify PNPP's Technical Specifications (TS) Table 3.3.5.1–1, "Emergency Core Cooling System (ECCS) Instrumentation," footnote (a) to require ECCS instrumentation to be operable only when the associated ECCS

subsystems are required to be operable. This proposed change is consistent with Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) change traveler TSTF–275–A, Revision 0.

Additionally, the proposed amendment would add exceptions to the diesel generator (DG) surveillance requirements (SRs) for TS 3.8.2, "AC Sources—Shutdown," to eliminate the requirement that the DG be capable of responding to ECCS initiation signals while the ECCS subsystems are not required to be operable. This proposed change is consistent with NRC-approved TSTF–300–A, Revision 0.

*Date of issuance:* May 6, 2013.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 163.

*Facility Operating License No. NPF–58:* This amendment revised the Technical Specifications and License.

*Date of initial notice in Federal Register:* January 8, 2013 (78 FR 1270).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 2013.

*No significant hazards consideration comments received:* No.

*Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant (PINGP), Units 1 and 2, Goodhue County, Minnesota*

*Date of application for amendments:* August 11, 2011, as supplemented by letters dated February 21, 2012, July 9, 2012, October 4, 2012, February 8, 2013, and April 30, 2013.

*Brief description of amendments:* The amendments revise the PINGP licensing basis to address plant capability related to the diesel fuel oil supplies during a design basis accident with a loss of offsite power and a single failure. The amendments also revise the technical specification (TS) fuel oil storage volume requirements to reflect the new licensing basis, resolve non-conservative emergency diesel generator fuel oil supply volumes, incorporate portions of Technical Specification Task Force Traveler 501, "Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control," and make other administrative changes to the TSs.

*Date of issuance:* May 9, 2013.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment Nos.:* 207 and 194.

*Renewed Facility Operating License Nos. DPR–42 and DPR–60:* Amendments revised the Licenses and TSs.

*Date of initial notice in Federal Register:* December 13, 2011 (76 FR 77568).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 9, 2013.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 17th day of May 2013.

For the Nuclear Regulatory Commission.

**Michele G. Evans,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2013–12424 Filed 5–24–13; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943–MLA–2; ASLBP No. 13–926–01–MLA–BD01]

**Atomic Safety and Licensing Board Panel; Before the Licensing Board: G. Paul Bollwerk, III, Chairman, Dr. Richard E. Wardwell, Dr. Thomas J. Hirons; Crow Butte Resources, Inc. (Marsland Expansion Area); Memorandum and Order (Notice of Hearing)**

May 16, 2013.

This proceeding concerns the May 16, 2012 application of Crow Butte Resources, Inc., (CBR) to amend its 10 CFR part 40 source materials license that authorizes the operation of CBR's existing in situ uranium recovery (ISR) facility near Crawford, Nebraska. If issued by the Nuclear Regulatory Commission (NRC), the requested amendment would permit CBR to operate a satellite ISR facility, the Marsland Expansion Area (MEA) site, which is located in Dawes County, Nebraska, some eleven miles to the southeast of CBR's Crawford central processing facility. In response to a November 26, 2012 NRC hearing opportunity notice regarding this application, see [CBR], License SUA–1534, License Amendment to Construct and Operate [MEA], 77 FR 71,454 (Nov. 30, 2012), petitioner Oglala Sioux Tribe (OST) and petitioners Antonia Loretta Afraid of Bear Cook, Bruce McIntosh, Debra White Plume, Western Nebraska Resources Council, and Aligning for Responsible Mining, referred to jointly as the Consolidated Petitioners, filed timely requests for hearing/petitions for leave to intervene contesting the CBR ISR amendment application. On

February 6, 2013, this three-member Atomic Safety and Licensing Board was established to preside over this proceeding. See [CBR], Establishment of Atomic Safety and Licensing Board, 78 FR 9945 (Feb. 12, 2013). Thereafter, in a May 10, 2013 issuance, while concluding that none of the Consolidated Petitioners had established the requisite standing to intervene in this proceeding, the Board also found that OST had demonstrated its standing and had submitted two admissible contentions concerning the CBR application and so admitted OST as a party to this proceeding. See LBP-13-6, 77 NRC \_\_ (May 10, 2013).

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. The hearing will be governed by the simplified hearing procedures set forth in 10 CFR part 2, subparts C and L, 10 CFR 2.300-2.390, 2.1200-2.1213.

During the course of this proceeding, the Board may conduct an oral argument, as provided in 10 CFR 2.331; may hold additional prehearing conferences pursuant to 10 CFR 2.329; and may conduct evidentiary hearings in accordance with 10 CFR 2.327-2.328, 2.1206-2.1208. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, [www.nrc.gov](http://www.nrc.gov).

Additionally, as provided in 10 CFR 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement. Limited appearance statements, which are placed in the docket for this proceeding, provide members of the public with an opportunity to make the Board and/or the participants aware of their concerns about any matters at issue in the proceeding, particularly any concerns associated with the admitted contentions. A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

*Mail to:* Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

*Fax to:* (301) 415-1101 (verification) (301) 415-1966).

*Email to:* [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov).

In addition, a copy of the limited appearance statement should be sent to

the Licensing Board Chairman using the same method at the address below:

*Mail to:* Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T-3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

*Fax to:* (301) 415-5599 (verification) (301) 415-7550).

*Email to:* [paul.bollwerk@nrc.gov](mailto:paul.bollwerk@nrc.gov).

Further, at a later date, the Board may conduct oral limited appearance sessions regarding this ISR proceeding at a location, or locations, in the vicinity of the MEA site. If one or more limited appearance sessions are scheduled, notice will be published in the **Federal Register** and/or made available to the public at the NRC PDR and on the NRC Web site, [www.nrc.gov](http://www.nrc.gov).

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS, including its adjudicatory proceeding-related Electronic Hearing Docket, is accessible from the NRC Web site at [www.nrc.gov/reading-rm/adams.html](http://www.nrc.gov/reading-rm/adams.html) (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

It is so ordered.

Dated: May 16, 2013, Rockville, Maryland.

For the Atomic Safety and Licensing Board.

**G. Paul Bollwerk, III,**

*Chairman, Administrative Judge.*

[FR Doc. 2013-12494 Filed 5-24-13; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 11005621, 11005896, 11005620, 11005897, 11006061, 11005840, 11005941; License Nos. IW017, IW029, XW010, XW018, XW020, XCOM1211, XSOU8825]**

### In the Matter of Energy Solutions Inc.; Order Approving Indirect Transfer of Import and Export Licenses

#### I

EnergySolutions Services, Inc. (ES Services), Duratek Services, Inc. (Duratek), and Manufacturing Sciences Corp. (MSC) hold import and export licenses and are subsidiaries of EnergySolutions, Inc. (ES, Inc.).

#### II

By letters dated January 18, 2013 and January 21, 2013, ES, Inc., on behalf of its subsidiaries ES Services, Duratek, and MSC, notified the U.S. Nuclear Regulatory Commission (NRC) of the proposed indirect transfer of control of import licenses IW017 (Duratek) and IW029 (ES Services), and export licenses XW010 (Duratek), XW018 (ES Services), XW020 (ES Services), XCOM1211 (MSC), and XSOU8825 (MSC), and, by letter dated April 17, 2013, submitted an application requesting that the NRC consent to the proposed indirect transfer of control of these import and export licenses.

The indirect transfer will occur as a result of a proposed transaction whereby ES, Inc., the current ultimate parent holding company of ES Services, Duratek, and MSC, would be directly acquired by Rockwell Holdco, Inc. (Rockwell), a Delaware corporation that was formed for the purpose of acquiring ES, Inc. and is held by certain investment fund entities organized by controlled affiliates of Energy Capital Partners II, LLC (ECP II). ES, Inc. represents that the indirect transfer will not result any change in the current technical and financial qualifications, or operations, of the NRC licenses for IW017, IW029, XW010, XW018, XW020, XCOM1211, and XSOU8825.

Approval of the indirect transfer of the licenses was requested pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. 2234). The letters from ES, Inc. dated January 18, 2013, January 21, 2013, and April 17, 2013, were made publicly available in ADAMS at ML13101A277, ML13101A287, and ML13122A113, respectively. No requests for hearing or comments were received.

Pursuant to Section 184 of the AEA, no license granted under 10 CFR part 110, shall be transferred, assigned, or in any manner disposed of, directly or indirectly, through transfer of control of any license to any person unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the AEA, and gives its consent in writing.

Upon review of the information received from ES, Inc., and other information before the Commission, and relying upon the representations and agreements contained in the Transfer Application, the NRC staff finds that: (1) The qualifications of ES Services, Duratek, and MSC regarding the proposed indirect transfer of control of IW017, IW029, XW010, XW018, XW020, XCOM1211, and XSOU8825 are not changed, and (2) the proposed indirect

transfer of the licenses due to the purchase of the current ultimate parent holding company of ES Services, Duratek, and MSC—ES, Inc.—which would be directly acquired by Rockwell Holdco, Inc., is otherwise consistent with applicable provisions of laws, regulations and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by a Safety Evaluation dated May xx, 2013.

### III

Accordingly, pursuant to Section 184 of the AEA Act of 1954, as amended, *it is hereby ordered* that the indirect transfer of licenses of ES Services, Duratek, and MSC, as described herein, is approved.

*It is further ordered* that after receipt of all required regulatory approvals of the proposed indirect transfer, ES, Inc. shall inform the Director of the Office of International Programs, in writing, of such receipt no later than one: (1) Business day prior to the closing of the proposed indirect transfer. Should the proposed indirect transfer not be completed within 60 days from the date of issuance of this Order, the Order shall become null and void; however, on written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated April 17, 2013, (which can be found at Agencywide Documents Access and Management System [ADAMS] Accession Number ML13122A113). Publicly-available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 8th day of May 2013.

For the Nuclear Regulatory Commission.

**Mark R. Shaffer,**

*Deputy Director, Office of International Programs.*

[FR Doc. 2013-12587 Filed 5-24-13; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee On Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on June 4, 2013, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance with the exception of a portion that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552(c)(4). The agenda for the subject meeting shall be as follows:

**Tuesday, June 4, 2013—8:30 a.m. Until 12:00 p.m.**

The Subcommittee will review and discuss the crack initiation module in the Extremely Low Probability of Rupture (xLPR) project. The Subcommittee will hear presentations by and hold discussions with industry representatives, the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301-415-5844 or Email: [Quynh.Nguyen@nrc.gov](mailto:Quynh.Nguyen@nrc.gov)) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146-64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the

meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: May 21, 2013.

**Cayetano Santos,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2013-12582 Filed 5-24-13; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 4, 2013, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Tuesday, June 4, 2013—12:00 p.m. Until 1:00 p.m.**

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301-415-6805 or Email: [Antonio.Dias@nrc.gov](mailto:Antonio.Dias@nrc.gov)) five days prior to

the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: May 21, 2013.

**Cayetano Santos,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2013–12584 Filed 5–24–13; 8:45 am]

**BILLING CODE 7590–01–P**

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**NUCLEAR REGULATORY COMMISSION**

[Docket No. 55–23694–SP; ASLBP No. 13–925–01–SP–BD01]

**Atomic Safety and Licensing Board; In the Matter of Charliisa C. Smith (Denial of Senior Reactor Operator License); Notice of Hearing**

May 21, 2013.

Before Administrative Judges: Ronald M. Spritzer, Chair, William J. Froehlich, Brian K. Hajek

The Atomic Safety and Licensing Board hereby gives notice that a hearing will be conducted in this proceeding pursuant to the Board's February 19, 2013, Order granting Ms. Charliisa

Smith's demand for hearing. LBP–13–03, 77 NRC \_\_ (2013). This hearing will consider Ms. Smith's arguments related to her allegation that the NRC wrongfully denied her application for a Senior Reactor Operator license.

The hearing will occur on Thursday, July 18, 2013, and will commence at 9:00 a.m. EDT. The hearing will be held in Room A of the Augusta Public Library, 823 Telfair Street, Augusta, GA 30901. It will be conducted in accordance with 10 CFR part 2, subpart L. Members of the public and representatives of the media are welcome to attend and observe the hearing. Please note that all signs, banners, posters, demonstrations, and displays are prohibited in accordance with NRC policy. See 66 FR 31719 (June 12, 2001).

Documents related to this proceeding are available for public inspection via the Nuclear Regulatory Commission's Agencywide Documents Access and Management System (ADAMS), which can be accessed through <http://www.nrc.gov/reading-rm/adams.html#web-based-adams>. General information regarding adjudicatory proceedings, including the provisions of Subpart L, can be found on the Atomic Safety and Licensing Board Panel's Web page, located at <http://www.nrc.gov/about-nrc/regulatory/adjudicatory.html>.

It is so ordered.

Dated: May 21, 2013. Rockville, Maryland.

For the Atomic Safety and Licensing Board.

**Ronald M. Spritzer,**

*Chair, Administrative Judge.*

[FR Doc. 2013–12585 Filed 5–24–13; 8:45 am]

**BILLING CODE 7590–01–P**

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**NUCLEAR REGULATORY COMMISSION**

**Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection; Notice of Meeting**

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on June 4, 2013, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Tuesday, June 4, 2013—8:30 a.m. Until 5:00 p.m.**

The Subcommittee will review and discuss the supplemental Safety Evaluation Report (SSER) No. 26

associated with the staff's review of the FSAR Amendment No. 109 for the Watts Bar Unit 2 Operating Licensing application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Tennessee Valley Authority, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or Email: [Girija.Shukla@nrc.gov](mailto:Girija.Shukla@nrc.gov)) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: May 21, 2013.

**Cayetano Santos,**

*Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2013-12591 Filed 5-24-13; 8:45 am]

BILLING CODE 7590-01-P

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Government In the Sunshine Meeting Notice

**TIME AND DATE:** Thursday, June 13, 2013, 10 a.m. (Open Portion); 10:15 a.m. (Closed Portion).

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC

**STATUS:** Meeting open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

#### Matters To Be Considered

1. President's Report
2. Confirmation—Margaret L. Kuhlows as Vice President, Office of Investment Policy
3. Minutes of the Open Session of the March 21, 2013 Board of Directors Meeting

#### Further Matters To Be Considered (Closed to the Public 10:15 a.m.)

1. Finance Project—Chile
2. Finance Project—Chile
3. Finance Project—Malaysia
4. Finance Project—Uruguay
5. Minutes of the Closed Session of the March 21, 2013 Board of Directors Meeting
6. Reports
7. Pending Major Projects

Written summaries of the projects to be presented will be posted on OPIC's Web site on or about May 23, 2013.

#### FOR FURTHER INFORMATION CONTACT:

Information on the meeting may be obtained from Connie M. Downs at (202) 336-8438.

Dated: May 23, 2013.

**Connie M. Downs,**

*Corporate Secretary, Overseas Private Investment Corporation.*

[FR Doc. 2013-12669 Filed 5-23-13; 11:15 am]

BILLING CODE 3210-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69612; File No. SR-Phlx-2013-52]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Establish a Lead Market Maker Program on the NASDAQ OMX PSX Market and To Make Related Changes to the Schedule Fees and Rebates for Execution of Quotes and Orders

May 21, 2013.

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 May 7, 2013, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, which filing was amended by Amendment No. 1 thereto on May 15, 2013, as described in Items 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 establish a Lead Market Maker (“LMM”) program on its NASDAQ OMX PSX (“PSX”) market and to make related changes to its schedule of fees and rebates for execution of quotes and orders on PSX. Phlx proposes to implement the proposed rule change as soon as practicable following Commission approval. The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/>, at the Exchange's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Commission recently approved modifications to the rules governing the operation of Phlx's PSX trading platform in order to replace its price/size/pro rata allocation model with a price/time model, and to permit member organizations to register as market makers in securities traded on PSX.<sup>3</sup> Phlx is now proposing to adopt a program for designating Lead Market Makers in particular securities, and adopting associated pricing changes. The overall purpose of these changes is to use financial incentives to encourage member organizations to become LMMs on PSX and adhere to rigorous standards of market quality.<sup>4</sup> In doing so, the Exchange hopes to increase the attractiveness of PSX as a trading venue and benefit all of its market participants by increasing the extent to which liquidity is available on PSX at or near the national best bid and national best offer (“NBBO”).

An NMS stock that has been selected by the Exchange as a security for which it wishes to designate a Lead Market Maker will be known as a “Qualified Security.” Initially, the Exchange expects that Qualified Securities will be limited to trust-issued receipts, portfolio depository receipts, managed fund shares, and other forms of exchange-traded products (“ETPs”). Phlx has the discretion, however, to designate any NMS stock eligible for trading on PSX as a Qualified Security for which an LMM may be designated. The Exchange will select Qualified Securities based on factors that include, but may not be limited to, historical trading patterns and the interest expressed by member organizations in making a market in particular securities. Depending on its

<sup>3</sup> Securities Exchange Act Release No. 69452 (April 25, 2013), 78 FR 25512 (May 1, 2013) (SR-Phlx-2013-24).

<sup>4</sup> In its “Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010” (February 18, 2011) (available at [http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/jacreport\\_021811.pdf](http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/jacreport_021811.pdf)), the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues recommend that the Commission “consider encouraging, through incentives or regulation, persons who regularly implement market maker strategies to maintain best buy and sell quotations which are ‘reasonably related to the market,’” noting that such “measures could certainly include differential pricing.” Phlx believes that this proposed rule change is responsive to this recommendation.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

trading volume in a particular month, a Qualified Security may be categorized as an "LMM Category 1 Security" (a Qualified Security with an average daily volume on all exchanges and trade reporting facilities during the prior three months of at least 50 million shares per day); an "LMM Category 2 Security" (a Qualified Security with an average daily volume on all exchanges and trade reporting facilities during the prior three months of at least 5 million but less than 50 million shares per day); an "LMM Category 3 Security" (a Qualified Security with an average daily volume on all exchanges and trade reporting facilities during the prior three months of at least 1 million but less than 5 million shares per day); or an "LMM Category 4 Security" (a Qualified Security with an average daily volume on all exchanges and trade reporting facilities during the prior three months of less than 1 million shares per day).

For liquidity-providing displayed quotes/orders entered by a member organization in a Qualified Security for which it has been designated as the Lead Market Maker, the Exchange proposes to pay the following rebates: \$0.0032 per share executed for an LMM Category 1 Security, \$0.0038 per share executed for an LMM Category 2 Security, \$0.0042 per share executed for an LMM Category 3 Security, and \$0.0048 per share executed for an LMM Category 4 Security.<sup>5</sup>

In order to qualify for the foregoing pricing for a given Qualified Security, an LMM must, through the MPID in which is registered as a PSX Market Maker, adhere to the following performance standards with respect to that Qualified Security:

- The LMM must at all times during regular market hours<sup>6</sup> maintain a displayed quote/order on each side of the market that is within at least 5% of the NBBO and that has a size of at least 500 shares; and
- The LMM must maintain a displayed bid quotation and/or displayed offer quotation of at least 100 shares at the national best bid and/or the national best offer at least 25% of the time during regular market hours.

<sup>5</sup> The Exchange notes that these rebates are being added to the PSX fee schedule only with respect to transactions in securities listed on exchanges other than NYSE. This is the case because at this time, the Exchange expects to designate LMMs only for ETPs, and NYSE does not list a significant number of ETPs at this time. Thus, if the Exchange proposed to designate an LMM for a NYSE-listed security, it would amend the fee schedule at that time to add the applicable pricing.

<sup>6</sup> 9:30 a.m. through 4:00 p.m., Eastern Time, or such shorter period as may be designated by the Exchange on a day when PSX closes early (e.g., the day after Thanksgiving).

- For a period of six months following initial designation as an LMM for a "Group" of Qualified Securities,<sup>7</sup> the LMM must adhere to such additional commitments with respect to size and/or percentage time at the national best bid and/or national best offer as to which the LMM agreed when it was selected as an LMM, measured as an average across all Qualified Securities in the Group. The selection process, and the process for an LMM to make additional market quality commitments, is discussed below.

In addition, an LMM will not qualify for the pricing for LMMs for any Qualified Security unless the LMM, through the MPID in which it is registered as a PSX Market Maker (i) provides an average daily volume of 5 million or more shares of liquidity in all securities during the month and (ii) adheres to the foregoing performance standards with respect to at least 90% of the Qualified Securities for which it is the LMM. Any period of time for which an LMM has received an excused withdrawal under Rule 3219 will not be considered in determining an LMM's compliance with performance requirements.<sup>8</sup>

In order to designate an LMM for a particular Qualified Security, the Exchange will engage in the following process:

(1) Qualified Securities will be assigned to a "Group," defined as one or more Qualified Securities designated from time to time by the Exchange for purposes of being assigned to an LMM. As with the determination that a particular security will be a Qualified Security, the assignment of Qualified Securities to a Group will be based on factors that include, but may not be limited to, historical trading patterns and the interest expressed by member organizations in making a market in particular securities.

(2) Following the selection of a Group by the Exchange, the Exchange shall publicly announce an auction for that Group. Under such an auction, member organizations that are registered PSX Market Makers may submit a bid to become the LMM for all of the Qualified Securities in such Group. Bids must be

<sup>7</sup> A "Group" means one or more Qualified Securities designated from time to time by the Exchange for purposes of being assigned to an LMM. As discussed below, an LMM may be assigned to a Group of Qualified Securities through a competitive bidding process.

<sup>8</sup> PSX Rule 3219 provides that a member organization may be temporarily excused from market making obligations based on a range of factors, such as equipment or connectivity problems, illness, vacation, non-voluntary suspension of a member organization's clearing arrangement, or advice of legal counsel.

submitted within the time frame specified by the Exchange, which time frame shall not be less than five business days from the date on which the auction is announced. Each bidder must agree to adhere to the minimum performance standards described above, and may, in addition, offer to adhere to heightened standards as follows:

- Percentage of time at which the LMM's bid quotation and/or offer quotation is at the national best bid and/or national best offer during regular market hours, in increments of 5% of the trading day above the base percentage of 25% of the trading day; and

- Size of bid quotation at the national best bid and offer quotation at the national best offer, in increments of 100 shares on each side above the base size of 100 shares on each side.

The LMM for a group of Qualified Securities will be designated on the basis of submitted bids, as follows:

- The bidder with the highest commitment to percentage of time at the national best bid and/or national best offer will be designated as the LMM. In the event of a tie, the bidder with the highest commitment to size at the national best bid and national best offer will be designated as the LMM. In the event of a tie with respect to both criteria, the bidder with the highest total volume on PSX during the prior twelve calendar months will be designated.

The designation will be effective on the first day of the month following the completion of the bidding process. If the Exchange is unable to allocate one or more Qualified Securities based on a bidding process because no member organization submits bids for it, the Exchange will assign the Qualified Security to the first registered market maker that expresses interest in becoming the LMM. To allow member organizations to become aware of opportunities to become an LMM, the Exchange will publish on its Web site a list of Qualified Securities that have not been assigned an LMM.

After serving as an LMM for a particular group of Qualified Securities for a period of six months, an LMM may withdraw from serving as LMM for any or all such Qualified Securities, by providing the Exchange three months' notice (or such shorter notice period as to which the Exchange may consent). In the event of an LMM withdrawal, the affected Qualified Securities will be reassigned through the auction process described above. In addition, the Exchange may determine that a particular security will cease to be a Qualified Security, but shall provide at

least three months' advance notice of such a determination.

In the event an LMM fails to meet the performance standards detailed above with respect to a particular Qualified Security during a particular month, the Exchange will notify the LMM of such deficiency.<sup>9</sup> If the LMM fails to meet these performance standards with respect to the same Qualified Security during a second consecutive month, the Exchange may reassign such Qualified Security to another LMM by conducting an auction in the manner described above.<sup>10</sup>

If a registered market maker for a Qualified Security that is not the LMM for such Qualified Security wishes to become the LMM for such Qualified Security, it may initiate a challenge by notifying the Exchange of its intention to initiate a challenge.<sup>11</sup> If this occurs, the incumbent LMM will be notified of the challenge, and the performance of the incumbent LMM and the challenger will be evaluated over the course of the following two calendar months with respect to both percentage of time and size at the NBBO. More than one member organization may challenge an LMM at one time.

If, during the two-month period of the challenge, a challenger (i) satisfies the requirements for LMM pricing (*i.e.*, it has an average daily volume of 5 million or more shares of liquidity in all securities during the month and satisfies the performance standards for the Qualified Security, as described above) and (ii) exceeds the incumbent LMM's time at the NBBO by a daily average of at least 5%, or equals or exceeds the LMM's time at the NBBO by a daily average of less than 5% but exceeds the LMM's size at the NBBO by a daily average of at least 100 shares, the Qualified Security will be reassigned to the challenger on the first day of the following month. If there is more than one challenger and both satisfy the foregoing requirements, the Qualified Security will be assigned to the challenger with the highest time at the NBBO (or the highest size at the NBBO in the event of a tie). Moreover, during the challenge months, the challenger

will be eligible to receive credits with respect to providing liquidity through displayed orders in the Qualified Security that is the subject of the challenge at the rates paid to an LMM, provided that it satisfied all volume requirements and performance standards.

If a challenger does not, over the course of the two challenge months, satisfy the requirements described above for receiving assignment of the Qualified Security, the Qualified Security will be retained by the incumbent LMM. If the challenger did, however, exceed the average time at the NBBO and average size at the NBBO of the incumbent LMM during the month immediately prior to the challenge months, and the challenger satisfied all volume requirements and performance standards associated with being an LMM for the Qualified Security, the challenger will receive, for the months of the challenge, the following credits with respect to providing liquidity through displayed orders in the Qualified Security that is the subject of the challenge: \$0.0031 per share executed with respect to an LMM Category 1 Security; \$0.0034 per share executed with respect to an LMM Category 2 Security; \$0.0036 per share executed with respect to an LMM Category 3 Security; and \$0.0039 per share executed with respect to an LMM Category 4 Security.

If a challenger does not, over the course of the two challenge months, satisfy the requirements described above for receiving assignment of the Qualified Security, and did not exceed the average time at the NBBO and average size at the NBBO of the incumbent LMM during the month immediately prior to the challenge months, the Qualified Security will be retained by the incumbent LMM, the challenger will receive the credits otherwise applicable to its provision of liquidity, and the challenger may not attempt to challenge with respect to that Qualified Security again for a period of six months.<sup>12</sup>

## 2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>13</sup> in general, and

with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</sup> in particular, in that the proposal 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and also in that the proposal provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The primary purpose of the process for designating LMMs and the associated pricing incentives proposed in this rule change is to use higher liquidity provider rebates to encourage market participants to make markets in Qualified Securities and support their trading by adhering to performance standards that are designed to markedly increase the extent to which PSX is quoting at or near the NBBO, as well as the size of its quote. The Exchange believes that a program designed to increase the depth of liquidity available at or near the inside market will remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because increasing such displayed liquidity increases opportunities for investors to have their orders executed at the best available prices, rather than having portions of their orders executed at inferior prices, and also enhances the price discovery process. Accordingly, the Exchange believes that the program has the potential to improve the prices at which investors' orders are executed and to dampen price volatility. Thus, the Exchange believes that the proposed rule change is responsive to the recommendation of the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues that the Commission "consider encouraging, through incentives or regulation, persons who regularly implement market maker strategies to maintain best buy and sell quotations which are 'reasonably related to the market,'" noting that such

<sup>9</sup>In addition, as noted above, the LMM will not receive LMM rebates with respect to that Qualified Security.

<sup>10</sup>Thus, although an LMM is required to meet market quality requirements with respect to only 90% of the Qualified Securities to which it is assigned in order to receive the rebates associated with being a LMM in any security, it may lose its LMM designation with respect to Qualified Securities for which it does not meet these requirements.

<sup>11</sup>However, no challenge may be initiated for the first six months after a Qualified Security has been assigned to a particular LMM.

<sup>12</sup>In addition to the foregoing changes, Phlx is also proposing to move the location of the following sentence—"For purposes of determining average daily volume hereunder, any day that the market is not open for the entire trading day will be excluded from such calculation"—from the end of paragraph (a) of the section governing fees for order execution and routing to the beginning. Phlx is also changing the reference to "Order" in the heading of such section to "Quote/Order".

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

“measures could certainly include differential pricing.”<sup>15</sup>

The Exchange further believes that the proposed process of selecting LMMs will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it relies on the objective criteria of a market maker’s commitment to time and size at the inside market, rather than a subjective or random process. Accordingly, the process will eliminate the potential for bias in the selection process and provide a mechanism by which bidders with the highest commitment to promotion of the Exchange’s market quality may be selected. The Exchange further believes that the proposed framework for an auction, under which bidders are provided at least five business days to submit a bid following the announcement of an auction, will ensure that adequate time is provided to interested market makers to determine the extent of commitment they are prepared to make. Similarly, the process by which a market maker may challenge an incumbent LMM if it believes that it can exceed the incumbent with respect to time and/or size at the inside ensures that the designation of LMMs is not static, but rather may shift to the market maker that is best able to support the trading of a particular Qualified Security. The Exchange believes that this process also has the potential to incentivize incumbent LMMs to increase their commitment to price and size at the inside in order to prevent successful challenges. Finally, the Exchange believes that its ability to reassign Qualified Securities if an LMM is not achieving the performance standards to which it has committed will contribute to the ability of the program to fulfill its market quality goals by ensuring that a Qualified Security does not remain indefinitely assigned to an LMM that is not achieving the goals of the program.

The Exchange believes that use of pricing as a means of encouraging commitments from LMMs is reasonable, not unfairly discriminatory, and reflective of an equitable allocation of fees because the higher rebates payable to LMMs are available only to the extent that such market participants satisfy the market quality requirements of

participation in the program.

Specifically:

- Phlx believes that the proposed rebates of \$0.0032, \$0.0038, \$0.0042, and \$0.0048 per share executed to be paid with respect to displayed orders of LMMs that provide liquidity are reasonable because they are specifically designed to incentivize member organizations to engage in quoting activity that will benefit all market participants by increasing the extent of liquidity provided at the inside market in Qualified Securities. Moreover, the size of the proposed rebates is inversely correlated with the trading volume of the Qualified Security. This approach is reasonable because higher rebates will be paid with respect to historically less liquid Qualified Securities so as to increase the liquidity available to support trading in these securities. This approach is also reasonable because the aggregate amount of rebates paid with respect to a lower volume Qualified Security will be low as long as the trading volume of the security remains low. As the volume increases, the rebate rate will decrease, thereby insuring that the aggregate rebate paid to an LMM in a given month for a single Qualified Security will not be excessively high.

- Phlx further believes that the proposed rebates payable to LMMs are equitable and not unreasonably discriminatory. Although only one market maker at a time may serve as an LMM for a given Qualified Security, the selection process for LMMs is open to all member organizations and is designed to encourage member organizations that wish to become LMMs to compete to provide more liquidity at or near the NBBO, thereby increasing the benefits of the program to all other market participants. Similarly, the opportunity for member organizations to challenge an incumbent LMM by competing to exceed its performance, and the ability of the Exchange to reassign Qualified Securities if an LMM is not consistently achieving performance standards, provide further assurance that the program is not unreasonably discriminatory and is consistent with an equitable allocation of fees. Finally, Phlx believes that the rebates are equitable and not unreasonably discriminatory because they are available only if, and to the extent that, the selected LMM actually achieves the performance standards required by the program.

- The proposed rebates payable to a challenger with respect to the liquidity it provides during the two months of a challenge period are reasonable because they correspond to the rebates payable

to the incumbent LMM with respect to similar quoting activity. Thus, if a challenger is successful in its challenge, it is eligible to receive rebates at the same level as the incumbent for the period of the challenge, reflecting the fact that it exceeded the incumbent with respect to performance standards and therefore will receive LMM rebates going forward. If the challenger is unsuccessful but nevertheless contributed significantly to market quality during the challenge period, it is reasonable for it to receive rebates that are higher than rebates payable to other market participants but nevertheless lower than the LMM rebates. Moreover, the Exchange believes that this aspect of the proposal is consistent with an equitable allocation of fees and not unreasonably discriminatory because it encourages challengers to attempt to exceed the market quality performance of incumbents, thereby benefitting all market participants that trade the Qualified Security in question, and because the higher rebates paid to the challenger are consistent with its performance at a level above or near the level of the incumbent.

The proposal to pay LMM rebates only with respect to securities listed on exchanges other than NYSE is reasonable because at this time, Phlx does not propose to designate NYSE-listed securities as Qualified Securities under the program. This is the case because the program is initially designed to enhance PSX’s competitiveness as a venue for trading ETPs, and NYSE does not list significant quantities of ETPs at this time. Phlx further believes that this aspect of the proposal is consistent with an equitable allocation of fees and not unfairly discriminatory because it is not unusual for exchange transaction fees to encourage market participants to trade securities listed on particular markets, or particular identified securities.<sup>16</sup>

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>17</sup> Phlx notes that it operates

<sup>16</sup> See e.g., <http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees> (paying higher liquidity provider rebates for securities listed on exchanges other than NYSE); Securities Exchange Act Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR–NYSE–2012–50) (special pricing for identified ticker symbols); Securities Exchange Act Release No. 67986 (October 4, 2012), 77 FR 61803 (October 11, 2012) (SR–NYSEArca–2012–104) (same).

<sup>17</sup> 15 U.S.C. 78f(b)(8).

<sup>15</sup> “Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010” (February 18, 2011) (available at [http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/jacreport\\_021811.pdf](http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/jacreport_021811.pdf)).

in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, Phlx believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, Phlx is introducing a new pricing programs [sic] to accompany changes to PSX's market structure. These changes were necessitated by the failure of PSX's former price/size execution algorithm to garner significant market share, and therefore reflect an effort to increase PSX's competitiveness. If the changes are unattractive to market participants, it is likely that PSX will fail to increase its share of executions. Conversely, because the proposed changes introduce new pricing incentive programs and reflect overall reductions in fees, if they are successful in attracting additional order flow, they will reduce costs to market participants and possibly encourage competitive responses from other trading venues. Accordingly, Phlx believes that the proposed changes will promote greater competition, but will not impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Phlx further believes that the process for selection of LMMs does not burden competition. Although only one market maker may serve as the LMM for a particular Qualified Security at a given time, LMMs will be assigned on the basis of a competitive bidding process that relies on objective criteria. The process for challenging incumbent LMMs and reassigning Qualified Securities for which an LMM is not achieving the program's requirements will provide further opportunities for competition among market makers to receive designations under the program. Moreover, depending on the outcome of the bidding process, assignments of Qualified Securities may spread across a range of market makers, so as to allow the financial benefits of the program to be dispersed among those market makers that are willing and able to

achieve the goals of the program. Thus, the Exchange believes that the program will enhance competition among market makers.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-Phlx-2013-52 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number *SR-Phlx-2013-52*. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2013-52 and should be submitted on or before June 18, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-12548 Filed 5-24-13; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-69607; File No. SR-BX-2013-029]**

**Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change Relating to Board of Director Qualifications**

May 20, 2013.

On March 27, 2013, NASDAQ OMX BX, Inc. ("BX" or "Exchange") 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 Article IV, Section 4.3 of the Exchange's By-Laws ("BX By-Laws") with respect to the composition of the Exchange's Board of Directors ("BX Board").<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on April 8, 2013.<sup>4</sup> The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 69280 (April 2, 2013), 78 FR 20971.

<sup>4</sup> See *id.*

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Sections 6(b)(3)<sup>6</sup> and 6(b)(5) of the Act.<sup>7</sup> The proposal will reduce from three to one the minimum number of Public Directors<sup>8</sup> that will be required to be included in the calculation of Non-Industry Directors<sup>9</sup> for the purpose of determining the number of Non-Industry Directors that may serve on the BX Board. The Exchange proposed this change in light of the cessation in 2012 by the Boston Options Exchange LLC (“BOX”) of its operations as an options trading facility of the Exchange<sup>10</sup> and the termination of the Regulatory Services Agreement (“RSA”) between BX and BOX.<sup>11</sup> To accommodate BOX when BOX was a BX facility, three Public Directors were required to be included in the calculation of the number of Non-Industry Directors on the BX Board.<sup>12</sup> The Commission notes that, although only one Public Director must be included in the composition of Non-Industry Directors as a result of the proposed rule change, the requirement in BX By-Law Article IV, Section 4.3 that the number of Non-Industry

Directors must equal or exceed the sum of Industry Directors<sup>13</sup> and Member Representative Directors<sup>14</sup> will continue to be met. Moreover, the Commission notes that, as a result of the proposed rule change, the BX Board composition requirement regarding Public Directors now will be similar to the board composition requirements of NASDAQ OMX PHLX LLC (“Phlx”) and The NASDAQ Stock Market LLC (“NASDAQ”), both of which require that the number of Non-Industry Directors must include at least one Public Director.<sup>15</sup> In addition, the Commission notes that the BX Board will continue to have three Public Directors, because the BX Board still will need to have three Public Directors available to serve on its Regulatory Oversight Committee, as required by BX By-Law Article IV, Section 4.13. For the foregoing reasons, the Commission

believes that the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-BX-2013-029) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O’Neill**,  
Deputy Secretary.

[FR Doc. 2013-12486 Filed 5-24-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69614; File No. SR-EDGX-2013-17]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the EDGX Exchange, Inc.’s Routing Broker Dealer, as Described in EDGX Rule 2.12(b)

May 21, 2013.

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 May 16, 2013, EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent the existing pilot program that permits the Exchange’s inbound router, as described in Rule 2.12(b), to receive inbound routes of equities orders through Direct Edge ECN LLC d/b/a DE Route (“DE Route”), the Exchange’s routing broker dealer, from EDGA Exchange, Inc. (“EDGA”). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange’s Internet Web site at [www.directedge.com](http://www.directedge.com), at the Exchange’s principal office, and at the Public Reference Room of the Commission.

<sup>5</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>6</sup> 15 U.S.C. 78f(b)(3).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> Pursuant to BX By-Law Article I(gg), a Public Director is a Director who has no material business relationship with a broker or dealer, the Corporation (*i.e.*, the Exchange) or its affiliates, or FINRA.

<sup>9</sup> Pursuant to BX By-Law Article I(bb), a Non-Industry Director is a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director.

<sup>10</sup> BOX was a facility of the Exchange under Section 39(a)(2) of the Act. See Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) (“BOXR Order”); and 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15). See also Release No. 58324; 73 FR 46936 (August 7, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (“Order Approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.”).

<sup>11</sup> The RSA specified, among other matters, that BX would terminate its responsibility for fulfilling certain obligations and cease performing certain regulatory functions as of the effective date of June 1, 2012, or sooner if BOX satisfied all of the conditions required for BOX to operate as a national securities exchange.

<sup>12</sup> See Securities Exchange Act Release No. 34-58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01); see also Securities Exchange Act Release No. 67009 (May 17, 2012), 77 FR 30566 (May 23, 2012) (SR-BX-2012-036).

<sup>13</sup> Pursuant to BX By-Law Article I(t), an Industry Director is a Director (excluding any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the “Staff Directors”)), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director’s firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director’s firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years.

<sup>14</sup> Pursuant to BX By-Law Article I(x), a Member Representative Director is a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to the BX By-Laws (or elected by the stockholders without such nomination or voting in the case of the Member Representative Directors elected pursuant to Article IV, Section 4.3(b)). A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member.

<sup>15</sup> See Phlx By-Law Article III, Section 3-2(a) and NASDAQ By-Law Article III, Section 2(a).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</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.

## 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

Currently, DE Route is the approved outbound order routing facility of EDGA.<sup>4</sup> The Exchange has been authorized to receive inbound routes of equities orders by DE Route from EDGA. The Exchange's authority to receive inbound routes of equities orders by DE Route from EDGA is currently subject to a pilot period of twelve months, ending June 30, 2013.<sup>5</sup> The Exchange hereby seeks permanent approval to permit the Exchange to accept inbound orders that DE Route routes in its capacity as a facility of EDGA. This is reflected in the proposed amendment to EDGX Rule 2.12(b).

Under the pilot, the Exchange is committed to the following obligations and conditions:

- The Exchange shall: (a) Enter into a plan pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated self-regulatory organization ("SRO") to relieve the Exchange of regulatory responsibilities for DE Route with respect to rules that are common rules between the Exchange and the SRO, and (b) enter into a regulatory services contract ("Regulatory Contract") with a non-affiliated SRO to perform regulatory responsibilities for DE Route for unique Exchange rules.

- The regulatory services contract shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which DE Route is

identified as a participant that has potentially violated Exchange or SEC Rules, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which DE Route is identified as a participant that has potentially violated Exchange or SEC rules.

- The Exchange, on behalf of Direct Edge Holdings LLC, shall establish and maintain procedures and internal controls reasonably designed to ensure that DE Route does not develop or implement changes to its system on the basis of non-public information obtained as a result of its affiliation with the Exchange until such information is available generally to similarly situated Members<sup>6</sup> in connection with the provision of inbound order routing to the Exchange.

The Exchange has complied with the above-listed conditions during the pilot. In meeting them, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to DE Route, as well as demonstrate that DE Route cannot use any information that it may have because of its affiliation with the Exchange to its advantage. Since the Exchange has met all the above-listed obligations and conditions, it now seeks permanent approval of the Exchange and DE Route's inbound routing relationship. Upon approval of the proposed rule change, the Exchange will continue to comply with the obligations and conditions as set forth in proposed EDGX Rule 2.12.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from DE Route acting in its capacity as a facility of EDGA, in a manner consistent with prior approvals and established protections. The Exchange believes that meeting the

commitments established during the pilot program demonstrates that the Exchange has mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to DE Route, as well as demonstrates that DE Route cannot use any information that it may have because of its affiliation with the Exchange to its advantage.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change does not impose any burden on intermarket or intramarket competition as it would allow the Exchange to have a permanent inbound router consistent with its competitors.<sup>9</sup>

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from its Members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve or disapprove such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

<sup>9</sup> See Securities Exchange Act Release No. 65453 (September 30, 2011), 76 FR 62122 (October 6, 2011) (SR-NYSE-2011-45); Securities Exchange Act Release No. 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR-BX-2011-007); Securities Exchange Act Release No. 66807 (April 13, 2012), 77 FR 23300 (April 18, 2012) (SR-BYX-2012-006); Securities Exchange Act Release No. 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR-BATS-2012-013).

<sup>4</sup> See Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010).

<sup>5</sup> See Securities Exchange Act Release No. 66644 (March 22, 2012), 77 FR 18877 (March 28, 2012) (SR-EDGX-2012-09).

<sup>6</sup> As defined in EDGX Rule 1.5(n).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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-EDGX-2013-17 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-EDGX-2013-17. 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 the filing will also 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-EDGX-2013-17 and should be submitted on or before June 18, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-12533 Filed 5-24-13; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>10</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69613; File No. SR-EDGA-2013-13]

**Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the EDGA Exchange, Inc.'s Routing Broker Dealer, as Described in EDGA Rule 2.12(b)**

May 21, 2013.

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 May 16, 2013, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to make permanent the existing pilot program that permits the Exchange's inbound router, as described in Rule 2.12(b), to receive inbound routes of equities orders through Direct Edge ECN LLC d/b/a DE Route ("DE Route"), the Exchange's routing broker dealer, from EDGX Exchange, Inc. ("EDGX"). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at [www.directedge.com](http://www.directedge.com), at the Exchange's principal office, and at the Public Reference Room of the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, DE Route is the approved outbound order routing facility of EDGX.<sup>4</sup> The Exchange has been authorized to receive inbound routes of equities orders by DE Route from EDGX. The Exchange's authority to receive inbound routes of equities orders by DE Route from EDGX is currently subject to a pilot period of twelve months, ending June 30, 2013.<sup>5</sup> The Exchange hereby seeks permanent approval to permit the Exchange to accept inbound orders that DE Route routes in its capacity as a facility of EDGX. This is reflected in the proposed amendment to EDGA Rule 2.12(b).

Under the pilot, the Exchange is committed to the following obligations and conditions:

- The Exchange shall: (a) Enter into a plan pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated self-regulatory organization ("SRO") to relieve the Exchange of regulatory responsibilities for DE Route with respect to rules that are common rules between the Exchange and the SRO, and (b) enter into a regulatory services contract ("Regulatory Contract") with a non-affiliated SRO to perform regulatory responsibilities for DE Route for unique Exchange rules.

- The regulatory services contract shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which DE Route is identified as a participant that has potentially violated Exchange or SEC Rules, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which DE Route is identified as a participant that has potentially violated Exchange or SEC rules.

- The Exchange, on behalf of Direct Edge Holdings LLC, shall establish and maintain procedures and internal controls reasonably designed to ensure that DE Route does not develop or implement changes to its system on the basis of non-public information obtained as a result of its affiliation with

<sup>4</sup> See Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010).

<sup>5</sup> See Securities Exchange Act Release No. 66643 (March 22, 2012), 77 FR 18876 (March 28, 2012) (SR-EDGA-2012-10).

the Exchange until such information is available generally to similarly situated Members<sup>6</sup> in connection with the provision of inbound order routing to the Exchange.

The Exchange has complied with the above-listed conditions during the pilot. In meeting them, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to DE Route, as well as demonstrate that DE Route cannot use any information that it may have because of its affiliation with the Exchange to its advantage. Since the Exchange has met all the above-listed obligations and conditions, it now seeks permanent approval of the Exchange and DE Route's inbound routing relationship. Upon approval of the proposed rule change, the Exchange will continue to comply with the obligations and conditions as set forth in proposed EDGA Rule 2.12.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from DE Route acting in its capacity as a facility of EDGX, in a manner consistent with prior approvals and established protections. The Exchange believes that meeting the commitments established during the pilot program demonstrates that the Exchange has mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to DE Route, as well as demonstrates that DE Route cannot use any information that it may have because of its affiliation with the Exchange to its advantage.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The

proposed rule change does not impose any burden on intermarket or intramarket competition as it would allow the Exchange to have a permanent inbound router consistent with its competitors.<sup>9</sup>

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from its Members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGA-2013-13 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.

<sup>9</sup> See Securities Exchange Act Release No. 65453 (September 30, 2011), 76 FR 62122 (October 6, 2011) (SR-NYSE-2011-45); Securities Exchange Act Release No. 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR-BX-2011-007); Securities Exchange Act Release No. 66807 (April 13, 2012), 77 FR 23300 (April 18, 2012) (SR-BYX-2012-006); Securities Exchange Act Release No. 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR-BATS-2012-013).

All submissions should refer to File Number SR-EDGA-2013-13. 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 the filing will also 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-EDGA-2013-13 and should be submitted on or before June 18, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-12532 Filed 5-24-13; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[File No. 500-1]

### **Greatmat Technology Corp., Kentucky USA Energy, Inc., Solar Energy Ltd., and Visiphor Corp., Order of Suspension of Trading**

May 23, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GreatMat Technology Corp. because it has not filed any periodic reports since the period ended December 31, 2010.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>6</sup> As defined in EDGA Rule 1.5(n).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kentucky USA Energy, Inc. because it has not filed any periodic reports since the period ended April 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Solar Energy Ltd. because it has not filed any periodic reports since the period ended December 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Visiphor Corp. because it has not filed any periodic reports since the period ended March 31, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 23, 2013, through 11:59 p.m. EDT on June 6, 2013.

By the Commission.

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2013-12677 Filed 5-23-13; 11:15 am]  
BILLING CODE 8011-01-P

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #13586 and #13587]

**Oklahoma Disaster #OK-00071**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA-4117-DR), dated 05/20/2013.

*Incident:* Severe Storms and Tornadoes.

*Incident Period:* 05/18/2013 and continuing.

*Effective Date:* 05/20/2013.

*Physical Loan Application Deadline Date:* 07/19/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/20/2014.

**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 President's major disaster declaration on 05/20/2013, 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 (Physical Damage and Economic Injury Loans): Cleveland, Lincoln, McClain, Oklahoma, Pottawatomie.

Contiguous Counties (Economic Injury Loans Only):

Oklahoma: Canadian, Creek, Garvin, Grady, Kingfisher, Logan, Okfuskee, Payne, Pontotoc, Seminole.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners With Credit Available Elsewhere .....	3.750
Homeowners Without Credit Available Elsewhere .....	1.875
Businesses With Credit Available Elsewhere .....	6.000
Businesses Without Credit Available Elsewhere .....	4.000
Non-Profit Organizations With Credit Available Elsewhere .....	2.875
Non-Profit Organizations Without Credit Available Elsewhere .....	2.875
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere .....	4.000
Non-Profit Organizations Without Credit Available Elsewhere .....	2.875

The number assigned to this disaster for physical damage is 13586C and for economic injury is 135870.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2013-12627 Filed 5-24-13; 8:45 am]

BILLING CODE 8025-01-P

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #13584 and #13585]

**Missouri Disaster #MO-00064**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Missouri dated 05/21/2013.

*Incident:* Severe Storm System, including Tornadoes, High Winds, Hail, and Flooding.

*Incident Period:* 04/16/2013 through 04/26/2013.

**DATES:** *Effective Date:* 05/21/2013.

*Physical Loan Application Deadline Date:* 07/22/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/21/2014.

**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: Jefferson.

Contiguous Counties:

Missouri: Franklin, Saint Francois, Saint Louis, Sainte Genevieve, Washington.

Illinois: Monroe.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners With Credit Available Elsewhere .....	3.375
Homeowners Without Credit Available Elsewhere .....	1.688
Businesses With Credit Available Elsewhere .....	6.000
Businesses Without Credit Available Elsewhere .....	4.000
Non-Profit Organizations With Credit Available Elsewhere .....	2.875
Non-Profit Organizations Without Credit Available Elsewhere .....	2.875
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere .....	4.000
Non-Profit Organizations Without Credit Available Elsewhere .....	2.875

The number assigned to this disaster for physical damage is 13584 B and for economic injury is 13585 0.

The States which received an EIDL Declaration # are Missouri, Illinois.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 21, 2013.

**Karen G. Mills,**  
Administrator.

[FR Doc. 2013-12628 Filed 5-24-13; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF STATE

[Public Notice 8336]

### 30-Day Notice of Proposed Information Collection: Young Turkey/Young America Evaluation (YTYA) Survey

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATE(S):** Submit comments directly to the Office of Management and Budget (OMB) up to June 27, 2013.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email:*

*oira\_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:**

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Michelle Hale, U.S. Department of State, ECA/P/V, SA-44, Room 664, Washington, DC 20547-4406, who may be reached on 202-203-7205 or at *halemj2@state.gov*.

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Young Turkey/Young America Evaluation (YTYA) Survey.

- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/P/V.

- *Form Number:* SV2013-0001.

- *Respondents:* The Turkish and American YTYA Program participants from 2009 to 2011.

- *Estimated Number of Respondents:* 235.

- *Estimated Number of Responses:* 153.

- *Average Time per Response:* 30 minutes.

- *Total Estimated Burden Time:* 77 hours.

- *Frequency:* One time.

- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:*

This request for a new information collection will allow ECA/P/V to conduct a survey to provide data not currently available. The survey is designed to assess the effectiveness of the YTYA Program in achieving its stated goals and objectives, and assess the outcomes of this two-way, bi-lateral exchange program that included 235 young Turkish and young American participants from 2009 to 2011. This study is authorized by the Mutual Educational and Cultural Exchange Act of 1961, as amended (also known as the Fulbright-Hays Act) (22 U.S.C. 2451 et seq.). The survey will be sent electronically to be completed via web survey to all program participants of the years stated above. Data gathered will enable analysis that can potentially be used to design similar bi-lateral exchange programs, improve existing programs, and to inform ongoing and future exchange programs in ECA.

*Methodology:*

The survey and all notifications will be entirely electronic to ease any burden on the participant. The survey will be distributed and responses received

electronically using the survey application Vovici.

Dated: May 17, 2013.

**Matt Lussenhop,**

Director of the Office of Policy and Evaluation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013-12609 Filed 5-24-13; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF STATE

[Public Notice 8337]

### 30-Day Notice of Proposed Information Collection: Iran Democracy Program Grants Vetting

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to June 27, 2013.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email:*

*oira\_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:**

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Danika Walters, Office of Iranian Affairs, 2201 C St. NW., Room 1245, Washington, DC 20520, who may be reached on 202-647-1347 or at *WaltersDL@state.gov*.

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Iran Program Grants Vetting.

- *OMB Control Number:* 1405-0176.
- *Type of Request:* Extension.

- *Originating Office:* Office of Iranian Affairs, Bureau of Near Eastern Affairs (NEA/IR).

- *Form Number:* DS-4100.
- *Respondents:* Potential grantees and participants for Iran programs.
- *Estimated Number of Respondents:* 200.
- *Estimated Number of Responses:* 200.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 200 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:* Awarding grants is a key component of the State Department's Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) requires the Department to conduct potential Iran program grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting, the Department collects information from grantees and sub-grantees regarding the identity and background of their key employees, boards of directors and program participants.

*Methodology:* We will collect this information either through fax or electronic submission.

Dated: May 17, 2013.

**Danika Walters,**

*Program Director, Office of Iranian Affairs, Bureau of Near Eastern Affairs, Department of State.*

[FR Doc. 2013-12607 Filed 5-24-13; 8:45 am]

**BILLING CODE 4710-31-P**

## DEPARTMENT OF STATE

[Public Notice 8338]

### Culturally Significant Objects Imported for Exhibition Determinations: "Before and After the Horizon: Anishinaabe Artists of the Great Lakes"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Before and After the Horizon: Anishinaabe Artists of the Great Lakes," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Museum of the American Indian, New York, New York, from on or about August 3, 2013, until on or about June 15, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6469). The mailing address is U.S. Department of State, SA-5, L/DP, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: May 20, 2013.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2013-12606 Filed 5-24-13; 8:45 am]

**BILLING CODE 4710-05-P**

## DEPARTMENT OF STATE

[Public Notice 8334]

### In the Matter of the Designation of the Moroccan Islamic Combatant Group aka Groupe Islamique Combattant Marocain (GICM) and All Associated Aliases as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of Moroccan Islamic Combatant Group as foreign terrorist organization have changed in such a manner as to warrant revocation of the designation.

Therefore, I hereby determine that the designation of the Moroccan Islamic Combatant Group as a foreign terrorist organization, pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189), shall be revoked.

This determination shall be published in the **Federal Register**.

Dated: May 13, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013-12611 Filed 5-24-13; 8:45 am]

**BILLING CODE 4710-10-P**

## DEPARTMENT OF STATE

[Public Notice 8333]

### Determination and Certification Under Section 40A of the Arms Export Control Act

Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781), and Executive Order 13637, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts:

Cuba  
Eritrea  
Iran  
Democratic People's Republic of Korea (DPRK, or North Korea)  
Syria  
Venezuela

This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated: May 10, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013-12613 Filed 5-24-13; 8:45 am]

**BILLING CODE 4710-10-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Public Notice for a Change in Use of Aeronautical Property and Long-Term Lease Approval at Harrisburg International Airport (MDT), Middletown, PA

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

**ACTION:** Request for public Comment.

**SUMMARY:** The Federal Aviation Administration is requesting public comment on the Susquehanna Area Regional Airport Authority's request to change 22 acres of airport property from aeronautical use to non-aeronautical use. The request also solicits approval for entering into a long-term lease for 2.893 acres within this area for a retail convenience store.

The parcel is located at Harrisburg International Airport (MDT) in Lower Swatara Township, Dauphin County, PA. The property is currently depicted on the Airport Layout Plan of record as airport property and consists of unimproved, undeveloped vacant land, which is partially paved and fenced. The land lies at the Northeast intersection of W. Harrisburg Pike (US Route 230) and Meade Avenue in Middletown, PA. The Parcel is further identified as Dauphin County identification parcels 36-023-008 and 009. The airport is proposing re-designating this 22-acre area as available for non-aeronautical use. The requested change is for the anticipated purpose of permitting the Airport Owner to enter into long-term lease agreements for commercial property development as a retail commercial center, consistent with the findings of The Highest and Best Use Study completed in 2011. A 2.893 acres sub parcel located within the subject area is ready to be developed. No land shall be sold as part of this land release request. This action will allow the re-designation of the 22-acre area, known as the "North 29", as land available for non-aeronautical use on the Airport Layout Plan (ALP). In addition, approval is sought by the Airport Authority to enter into a long-term lease agreement with a retail convenience store to be located on a 2.893 acre sub-plot located within the 22-acre plot. The documents reflecting

the Sponsor's request are available, by appointment only, for inspection at the Harrisburg International Airport, Executive Director's Office and the FAA Harrisburg Airport District Office in Camp Hill, PA.

**DATES:** Comments must be received on or before June 27, 2013.

**ADDRESSES:** Documents are available for review at the Susquehanna Area Regional Airport Authority Office located at Harrisburg International Airport: Timothy Edwards, Executive Director, Harrisburg International Airport, Susquehanna Area Regional Airport Authority, One Terminal Drive, Suite 300, Middletown, PA 17057, 717-948-3900, and at the FAA Harrisburg Airports District Office: Oscar D. Sanchez, Program Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011, (717) 730-2834.

**FOR FURTHER INFORMATION CONTACT:** Oscar D. Sanchez, Program Manager, Harrisburg Airports District Office (location listed above).

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to re-designate current aeronautical property at the Harrisburg International Airport as available for non-aeronautical use under the provisions of Section 47125(a) of Title 49 U.S.C.

The following is a brief overview of the request: The Susquehanna Area Regional Airport Authority (SARAA), that owns and operates Harrisburg International Airport (MDT), has requested the redesignation of a 22-acre parcel located on airport property, as available for non-aeronautical development. The 22-acre parcel is located in proximity to the Northeast intersection of W. Harrisburg Pike (US Route 230) and Meade Avenue in Middletown, PA. The Parcel is further identified as Dauphin County identification parcels 36-023-008 and 009. The request also solicits approval for entering into a long-term lease for 2.893 acres of this area for a retail convenience store. The Airport Authority has determined that it is in its best interest to encourage development under long-term leases of currently unused, vacant land assets as a means to diversify airport revenues. Due to the location of the property, the area known as the "North 29" serves no foreseeable aeronautical purpose and is available for non-aeronautical development. This land was conveyed to SARAA by the Commonwealth of Pennsylvania through its Department of Transportation by a deed dated 01/02/1998 and recorded in Dauphin County, Pennsylvania book 3008, page 425.

There are no known adverse impacts to the operation of the airport and the 22-acre parcel of land is not needed for future aeronautical development as shown on the Harrisburg International Airport approved Airport Layout Plan (ALP). There is to be no sale or transfer of property rights in connection with this Airport Layout Plan change. Any proceeds from the lease of the pending long-term commercial retail lease agreement or other future non-aeronautical development are to remain on the airport for capital development and to cover the operating costs of the Airport.

Any person may inspect the request by appointment at the FAA office address listed above.

Interested persons are invited to comment on the proposed change in use of the property. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, May 17, 2013.

**Lori K. Pagnanelli,**

*Manager, Harrisburg Airports District Office.*

[FR Doc. 2013-12617 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012-0309]

#### Agency Information Collection Activities; Approval of a New Information Collection Request: Driver and Carrier Surveys Related to Electronic Onboard Recorders (EOBRs), and Potential Harassment Deriving From EOBR Use

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), USDOT.

**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 review and approval. The purpose of this new ICR is to broadly examine, by the collection of survey data, the issue of driver harassment and determine the extent to which Electronic Onboard Recorders (EOBRs) used to document drivers' hours of service (HOS) could be used by motor carriers or enforcement personnel to harass drivers or monitor driver productivity. The survey will collect information on the extent to which respondents believe that the use

of EOBRs may result in coercion of drivers by motor carriers, shippers, receivers, and transportation intermediaries. The proposed surveys for drivers and carriers collect information related to issues of EOBR harassment of drivers by carriers. FMCSA plans to publish a supplemental notice of proposed rulemaking on EOBRs. Prior to the issuance of a final rule, FMCSA will consider the survey results.

**DATES:** Please send your comments by June 27, 2013. OMB must receive your comments by this date in order to act on the ICR.

**ADDRESSES:** All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2012-0309. 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), 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:** Mr. Albert Alvarez, Research Division, Office of Analysis, Research and Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Telephone: (202) 385-2387; email [albert.alvarez@dot.gov](mailto:albert.alvarez@dot.gov). Requests for additional information or copies of the information collection instrument and instructions should be directed to Gene Bergoffen, Principal, Maine Way Services, PO Box 166, Fryeburg, ME 04037. Telephone: 207 935-7948; email [bergoffen@roadrunner.com](mailto:bergoffen@roadrunner.com).

**SUPPLEMENTARY INFORMATION:**

*Title:* Driver and Carrier Surveys Related to Electronic Onboard Recorders (EOBRs), and Potential Harassment Deriving from EOBR Use.

*OMB Control Number:* 2126-XXXX.

*Type of Request:* New ICR.

*Respondents:* Commercial motor vehicle (CMV) drivers and carriers.

*Estimated Number of Respondents:* 1,039 [(2 carrier in-depth interviews + 20 carrier pre-test Web interviews + 400 carrier main survey Web interviews + 100 carrier non-response telephone followup interviews) + [7 driver in-depth interviews + 510 driver intercept interviews) = 1,039].

*Estimated Time per Response:* The estimated average time per responses are as follows: 30 minutes for Form 5877, "In-Depth Interview With Carriers," Form 5878, "In-Depth Interview With Carriers Recruitment Questionnaire," and Form MCSA-5881, "In-Depth Interview With Drivers Recruitment Questionnaire;" 20 minutes for Form 5879, "Web Survey With Carriers," Form MCSA-5880, "In Depth Interview With Drivers Main Questionnaire," and Form MCSA-5881, "In Depth Interview With Drivers Recruitment Questionnaire;" and 10 minutes for Form MCSA-5885, "Intercept Survey With Carriers."

*Expiration Date:* N/A.

*Frequency of Response:* Once.

*Estimated Total Annual Burden:* 110.5 hours [(2 carrier in-depth interviews × 30 minutes/60 minutes) + (20 carrier pre-test Web interviews × 20 minutes/60 minutes) + (400 carrier main survey Web interviews × 20 minutes/60 minutes) + (100 carrier non-response telephone followup interviews × 10 minutes/60 minutes) + (7 driver in-depth interviews × 30 minutes/60 minutes) + (510 driver intercept interviews × 20 minutes/60 minutes)/3 year approval = 110.5].

**Background**

Motor carrier management and oversight of drivers' HOS is one of FMCSA's fundamental concerns. Motor carriers began to look to automated methods of recording drivers' record of duty status (RODS) in the mid-1980s as a way to save drivers' time and improve the efficiency of their compliance assurance procedures. In April 1985, the Federal Highway Administration (FHWA), the predecessor agency to FMCSA within the U.S. Department of Transportation (USDOT), granted the first of 10 waivers to allow use of onboard computers in lieu of requiring drivers to complete handwritten RODS.

After conducting notice-and-comment on the rulemaking regarding automated methods of recording RODS, the Agency issued a final rule on September 30, 1988. The rule revised part 395 of the Federal Motor Carrier Safety Regulations (FMCSRs) by allowing motor carriers the flexibility to equip CMVs with an automatic onboard recording device (AOBRD) in lieu of requiring drivers to complete handwritten RODS. The term "automatic onboard recording device" was defined under § 395.2 as follows:

an electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically as required by § 395.15. The device must be integrally synchronized

with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day.

On April 5, 2010, FMCSA published a final rule to incorporate new performance standards for electronic onboard recorders (EOBRs) installed in CMVs manufactured on or after June 4, 2012 (75 FR 17208). The new rule required installation of EOBRs meeting the new performance standards in CMVs operated by motor carriers found by the Agency to have serious HOS noncompliance. EOBRs would have been required to record the CMVs location automatically at each change of duty status and at intervals while the CMV is in motion. Currently, onboard recorders are not required to do this. To ensure a smooth transition from AOBRDs to EOBRs, the final rule would have required that for CMVs manufactured on or after June 4, 2012, devices installed by a manufacturer or motor carrier would need to have met the requirements of § 395.16. CMVs manufactured prior to June 4, 2012, could be equipped with an HOS recording device that met the requirements of either § 395.15 (AOBRD) or § 395.16.

The 2010 EOBR rule was challenged in court based in part on concerns that EOBRs could be used to harass drivers. *Owner-Operators Independent Drivers Association v. U.S. Department of Transportation*, 656 F.3d 580 (7th Cir. 2011). At the time, a new rulemaking by FMCSA had been started that proposed to require certain motor carriers operating CMVs in interstate commerce to use EOBRs to document their drivers' HOS (76 FR 5537, February 1, 2011). Based on issues raised in the litigation on the April 2010 final rule, FMCSA published a notice requesting public comment on the harassment issue on April 13, 2011 (76 FR 20611). The Agency sought and received comments on the following items:

- Experiences drivers have had regarding harassment, including coercion by carriers to evade the HOS regulations;
- Whether such carrier activity would be permitted as productivity monitoring or would be barred by other statutory or regulatory provisions;
- Whether use of EOBRs would impact the ability of carriers, shippers, and other parties to harass or coerce drivers to violate HOS requirements;
- The effectiveness of mechanisms currently available under 49 CFR 392.3, 49 CFR part 395 and 49 U.S.C. 31105(a) to protect against carrier coercion; and

• Whether additional regulations or guidance from FMCSA are necessary to ensure that EOBR devices are not used to harass vehicle operators.

On August 26, 2011, the U.S. Court of Appeals for the Seventh Circuit vacated the Agency's April 2010 final rule on the use of EOBRs. The court stated that contrary to statutory requirements, the Agency failed to address the issue of driver harassment, including how EOBRs could potentially be used to harass drivers and ways to ensure that EOBRs were not used to harass drivers. The basis for the court's decision was FMCSA's failure to directly address a requirement in 49 U.S.C. 31137(a).

As a result of the court's ruling, carriers relying on electronic devices to monitor HOS compliance are currently governed by the rules that address the use of AOBRDs as in effect immediately before the court's ruling (49 CFR 395.15). On May 14, 2012, FMCSA rescinded the April 5, 2010, final rule, as amended September 13, 2010, in response to the court's decision to vacate the rulemaking. FMCSA had previously announced its intent to move forward with a proposal on EOBRs with a supplemental notice of proposed rulemaking (SNPRM) [77 FR 7562 (February 13, 2012)]. Congress subsequently mandated that the Secretary of Transportation adopt regulations requiring that CMVs involved in interstate commerce and operated by drivers who are required to keep records of duty status (RODS) be equipped with "electronic logging devices" (MAP-21, Pub. L. 112-141, § 32301(b), 126 Stat. 405, 786-788 [July 6, 2012], amending 49 U.S.C. 31137). MAP-21 retained the requirement that regulations ensure such devices not be used to harass drivers of CMVs and also required that certain regulations governing CMV safety ensure that drivers of CMVs are not coerced into operating in violation of regulations to be promulgated [Pub. L. 112-141, § 32911, 126 Stat. at 818 (amending 49 U.S.C. 31136(a))].

The objectives of the proposed driver and carrier surveys through this ICR are to broadly examine the issue of driver harassment and coercion and determine the extent to which EOBRs could be used to either harass and/or monitor driver productivity. These surveys will explore the relevant issues from the point of view of both drivers and carriers toward the use of EOBRs. The survey results will inform FMCSA in its ongoing rulemaking on EOBRs, including potential countermeasures or best practices that could ensure that EOBRs are not used to harass or coerce CMV drivers. The purpose of these

surveys is, in part, to respond to the court's suggestion that the Agency research the issue of driver harassment based on use of the device.

### Comments From the Public

#### General Summary

The FMCSA received 36 comments to the 60-day **Federal Register** notice published December 13, 2012 (77 FR 74267), regarding the Agency's Information Collection Activities; Approval of a New Information Collection Request: Driver and Carrier Surveys Related to Electronic Onboard Recorders (EOBRs), and Potential Harassment Deriving from EOBR Use. There were no requests from commenters to receive copies of the survey and the documents associated with the survey that were available upon request as stated in the **Federal Register** notice. Of the 36 comments received three directly related to the survey. The remaining comments focused directly or indirectly on the effects of EOBRs in-truck operations.

Commenters included industry associations, motor carriers, and individual CMV drivers. The three commenters directly referencing the survey notice were the American Trucking Association (ATA), Owner-Operator Independent Drivers Association (OOIDA), and Trans Products & Tran Services.

Five comments from trucking companies addressed the use of EOBRs in their operations. One company had a neutral comment, one had a negative comment, and three had positive comments.

Twenty-six separate comments from CMV drivers generally opposed the use of EOBRs in truck operations according to the following four categories:

- One opposed the use of EOBRs and their intrusion into driver's rest and personal time;
- Twenty-one objected to the impact of EOBRs on driver fatigue/HOS given the unreasonable demands of carriers to exceed their legal driving time;
- Two opposed the excessive costs for small carriers in the purchase and maintenance of EOBRs; and
- Two said the use of EOBRs would be an invasion of privacy.

Four individual commenters supported EOBRs. Their reasoning was that EOBRs will enable CMV drivers to be accountable for ensuring they do not run over the legal HOS limits and, by the use of EOBRs, carriers will not be able to force drivers to drive beyond their HOS.

None of these commenters provided substantive information resulting in

changes to the proposed survey or its associated documents. However, FMCSA does appreciate all these comments and will consider them when reviewing the findings of the survey project.

ATA wrote a supportive letter for the use of EOBRs and the survey project goals. It stated "ATA supports laws and regulations mandating the use of electronic logging devices (ELDs)—often called electronic onboard recorders or EOBRs—for recording drivers' compliance with Federal hours-of-service regulations. ATA also supports the FMCSA plan to survey drivers and carriers on how ELDs can be used to monitor productivity and their potential use as a tool to harass drivers."

OOIDA commented that it "support[s] the goals of the proposed survey." It further stated "OOIDA submits these comments to encourage the Agency to design this effort in a way that collects information on the wide range of pertinent driver experiences."

Trans Products & Tran Services, which offers trucking regulation support and education, opposed the plan survey stating:

We feel this survey will be inadequate and will not fairly represent the entire industry that will be potentially affected by a final rule requiring all commercial motor carriers to have EOBRs as a way to record driver hours of service. Furthermore we do not feel that the data retrieved and recorded will significantly reduce crashes.

#### FMCSA Response

ATA

FMCSA agrees with ATA on the need for the survey, the findings, and the survey's potential importance to the trucking industry.

#### TRANS PRODUCTS & TRAN SERVICES

The commenter raised two concerns related to the survey process. First, the commenter stated that the survey will not represent the proper pool of affected drivers. FMCSA plans to randomly survey drivers at truck stops and will sample an adequate sample of drivers who actually use EOBRs. But the first questions being asked will be tested with a random sample of drivers contacted through a telephone survey. FMCSA believes that this sample strategy will be generally representative of the universe of drivers that currently use and will be potentially required to use EOBRs.

Second, this commenter raised a concern that drivers will not feel free to comment because of the fear of intimidation by their superiors. In response, no surveys conducted at truck stops will identify the driver or the

company for which he/she works for, and the data will be aggregated and not associated with any individual or fleet.

OOIDA

FMCSA understands that OOIDA supports the goals of the proposed survey but raises questions as to whether the survey process will reflect concerns of drivers. The OOIDA comments also suggest some content for the surveys.

OOIDA raised concerns about the composition of the research team and question whether drivers are adequately represented at this stage. In response, given the contentious nature of this issue, FMCSA selected a team of

consultants and academic researchers with expertise in the motor carrier industry and survey design. Nonetheless, we look forward to working with OOIDA, as well as other parties from the driver and carrier community, to optimize the effectiveness of this survey.

The following table notes FMCSA's reply to OOIDA's suggestions in response to four questions in the notice of December 13, 2012. Additionally, it is important to note that the surveys were developed after intensive review of OOIDA's earlier submissions including comments relating to potential EOBR regulations. The FMCSA also reviewed

the complete docket of comments, which includes driver input from public listening sessions held in 2012. In addition, FMCSA considered public input provided at a subcommittee meeting of FMCSA's Motor Carrier Safety Advisory Committee, of which an OOIDA official is a member.

As part of the survey development there will be interviews of randomly selected drivers and fleets on the survey instruments. The purpose is to test the survey before it is provided to drivers and fleet carriers.

Responses to OOIDA's concerns are provided in regular text in the chart below.

Page/reference of OOIDA comment	
6; III-A-2	<p><i>OOIDA commented: Without knowing the number of questions and the scope of the discussions that FMCSA interviewers intend to conduct, it is difficult to judge whether the estimated time burden in the notice is accurate.</i></p> <p>Reply: The truck drivers' intercept survey is estimated to have a burden of 20 minutes per interview. A series of questions focuses on 14 different interactions between drivers and their supervisors. Drivers are asked the following about them: the frequency with which they occur; which, if any, they consider harassment; which, if any, they see as coming from the existence of an EOBR (if their truck has one); and which, if any, are rooted in other truck functionality. In addition, information is gathered about coercion and management reactions to driver's reluctance to obey management's instructions. The draft list of interactions is as follows:</p> <p>Schedules:</p> <ul style="list-style-type: none"> <li>A. Ask you to meet a customer load schedule you viewed as unrealistic.</li> <li>B. Ask a customer to adjust a load schedule so it was realistic for you.</li> </ul> <p>Fatigue:</p> <ul style="list-style-type: none"> <li>C. Ask you to operate when you judged you were fatigued.</li> <li>D. Ask that you shut down if you felt fatigued.</li> </ul> <p>Logging and breaks:</p> <ul style="list-style-type: none"> <li>E. Ask you to log inaccurately to get more work time or delay a break.</li> <li>F. Ask you to log accurately when you could have had more work time or delayed a break by being inaccurate.</li> <li>G. Change your log record after it was made to give you more work time or delay a break.</li> <li>H. Ask you to take sufficient time off duty to recover from fatigue.</li> </ul> <p>Communications:</p> <ul style="list-style-type: none"> <li>I. Interrupt your off-duty time with a message that woke you up.</li> <li>J. Contact you promptly about a new job task so you didn't have to wait without pay.</li> </ul> <p>Paid and Unpaid Time:</p> <ul style="list-style-type: none"> <li>K. Pay you for customer delays in picking up or delivering freight.</li> <li>L. Require you to wait for customer delays for more than 2 hours without pay.</li> <li>M. Arrange your loads so you had little delay time between loads.</li> <li>N. Require you to wait between loads for more than 2 hours without pay.</li> </ul>
6; III-A-3-a	<p><i>OOIDA commented: FMCSA would enhance the quality, usefulness, and clarity of the information collected if it: a) collected sufficient data from drivers who operated an EOBR rather than just a random sample.</i></p> <p>Reply: We are aware that a minority of truck drivers use EOBRs. The plan for intercepts is designed to limit the number of truck drivers without EOBRs in order to oversample truck drivers with EOBRs. Quotas will be established throughout day-parts in order to ensure that drivers with and without EOBRs will be interviewed through the course of the day, limiting day-part bias.</p>
6; III-A-3-b	<p><i>OOIDA commented: FMCSA would enhance the quality usefulness, and clarity of the information collected if it: b) asked drivers whether they had experienced each of the examples of the type of harassment outlined in these comments.</i></p> <p>Reply: As noted above, drivers will be handed a list of interactions with their carriers, asked whether they have experienced them, and asked whether or not they consider them harassment.</p>
6; III-A-3-c	<p><i>OOIDA commented: FMCSA would enhance the quality, usefulness, and clarity of the information collected if it: c) guaranteed drivers' confidentiality to ensure candor without fear of retaliation or enforcement actions.</i></p> <p>Reply: Promises of confidentiality are made at the beginning of the survey. The language currently reads as follows: "All responses to this collection of information are voluntary and confidentiality will be provided to the extent allowed by law."</p>
7; III-A-3-d	<p><i>OOIDA commented: FMCSA would enhance the quality, usefulness, and clarity of the information collected if it: d) ensured the survey was broad enough to inquire to the types of harassment described in these comments.</i></p> <p>Reply: Please see the list of interactions listed above.</p>
7; III-A-4	<p><i>OOIDA commented: The burden of the survey would be reduced if drivers were asked whether they had specifically been harassed, rather than asking driver broad, nonspecific questions.</i></p> <p>Reply: We agree and believe the list of interactions is specific.</p>
14	<p><i>OOIDA commented: Include law enforcement use or non-use of EOBRs.</i></p>

Page/reference of OOIDA comment	
	<p>Reply: Regarding law enforcement use (or non-use) of EOBRs, members of law enforcement are currently not included in the survey plan as respondents, but drivers' experiences with them are. Drivers with EOBRs are asked the following two questions:</p> <p>Have you ever had a problem producing your electronic hours-of-service records for a law enforcement officer? If so, was this problem big enough that you felt harassed by the request to see your records?</p> <p>Carriers are not asked this pair of questions.</p>

OOIDA also expressed a concern regarding measures to prevent carriers from harassing drivers through the use of EOBRs. The qualitative questionnaires for both carriers and drivers ask participants what could be done to prevent this, either through the technology itself or in processes surrounding EOBR usage. Additionally, the issue is addressed in the quantitative surveys. Carriers and drivers are asked to identify (from a list) actions which they think are "good ideas" to prevent carriers from harassing their drivers. In addition, carriers and drivers are asked what FMCSA actions would be appropriate in response to carrier harassment. For specific examples of relevant questions regarding mitigation see: Qualitative, Carriers: 18b, 19; Qualitative, Drivers: 18; Quantitative, Carriers: 26, 27; and Quantitative, Drivers: 32, 33.

No party requested a copy of the survey instruments and associated documents before their submission. These documents were, however, available upon request as stated in the 60-day notice (77 FR 74267, Dec. 13, 2012). Should FMCSA receive a request for these instruments or documents, FMCSA will post them in the docket for this ICR to ensure broad public access.

FMCSA will publish a SNPRM on EOBRs and will consider survey results concerning the EOBR use by motor carriers to ensure that EOBRs are not used by carriers to harass or coerce drivers prior to the issuance of a final rule.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including the following: (1) Whether the proposed collection is necessary for 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: May 20, 2013.

**Dr. G. Kelly Leone,**

*Associate Administrator, Office of Research and Information Technology and Chief Information Officer.*

[FR Doc. 2013-12564 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA 2013-0002-N-12]

#### Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking re-approval of the following information collection activities that were previously approved by OMB under Emergency Clearance Procedures. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than July 29, 2013.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130-\_\_\_\_." Alternatively, comments may be transmitted via facsimile to (202) 493-6216 or (202) 493-6497, or via email to Mr. Brogan at [Robert.Brogan@dot.gov](mailto:Robert.Brogan@dot.gov), or

to Ms. Toone at [Kim.Toone@dot.gov](mailto:Kim.Toone@dot.gov). Please refer to the assigned OMB control number and the title of the information collection in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292) or Ms. Kimberly Toone, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6132). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval of such activities by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic

submission of responses). See 44 U.S.C. 3506(c)(2)(A)(i)-(iv); 5 CFR 1320.8(d)(1)(i)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of the information collection activities that FRA will submit for renewed clearance by OMB as required under the PRA:

**Title:** Notice of Funding Availability and Solicitation of Applications for Grants under the Railroad Safety Technology Grant Program.

**OMB Control Number:** 2130-0587.

**Abstract:** The Rail Safety Technology Program is a newly authorized program under the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110-432; October 16, 2008). The program was directed by Congress and passed into

law in the aftermath of a series of major rail accidents that culminated in an accident at Chatsworth, California, in 2008. Twenty-five people were killed and 135 people were injured in the Chatsworth accident. This event turned the Nation's attention to rail safety and the possibility that new technologies, such as PTC, could prevent such accidents in the future. The RSIA ordered installation of PTC by all Class I railroads on any of their mainlines carrying poisonous inhalation hazard (PIH) materials and by all passenger and commuter railroads on their main lines not later than December 31, 2015.

As part of the RSIA, Congress provided \$50 million to FRA to award, in one or more grants, to eligible projects by passenger and freight rail carriers, railroad suppliers, and State and local Governments. Although no funds are available for FY 2014, funds were awarded to seven projects that have a public benefit of improved railroad safety and efficiency, with priority given to projects that make PTC technologies interoperable between railroad systems; projects that accelerate the deployment of PTC technology on high-risk corridors, such as those that have high volumes of hazardous material shipments; and for projects

over which commuter or passenger trains operate, or that benefit both passenger and freight safety and efficiency.

Funds provided under this grant program could constitute a maximum of 80 percent of the total cost of a selected project, with a minimum of 20 percent of costs funded from other sources. The funding provided under these grants is being made available to grantees on a reimbursement basis. Funding made available through grants provided under this program, together with funding from other sources that is committed by a grantee as part of a grant agreement, needs to be sufficient to complete the funded project and achieve the anticipated technology development. FRA expects that the seven projects awarded grants will be completed over the next three years. FRA is continuing to collect information from grantees until all seven projects have been completed.

**Form Number(s):** FRA F 6180.146; SF-269; SF-270.

**Affected Public:** Businesses.

**Respondent Universe:** 7 Railroads.

**Frequency of Submission:** On occasion.

**Reporting Burden:**

Grant program	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Meeting requests with FRA Associate Administrator (FRA).	7 Railroads/Grant Awardees .....	7 meeting requests .....	30 minutes .....	4
Face to Face Meetings with Associate Admin. (FRA).	7 Railroads/Grant Awardees .....	7 project meetings .....	2 hours .....	14
Revisions to Grant Applications (HHS).	7 Railroads/Grant Awardees .....	7 grant application revisions .....	40 hours .....	280
Execution Process (Progress Reports) (FRA).	7 Railroads/Grant Awardees .....	84 progress reports .....	1 hour .....	84
Close-Out Procedures:				
Close Out Documents (HHS)	7 Railroads/Grant Awardees .....	7 close-out documents .....	4 hours .....	28
Final Technical Reports (FRA)	7 Railroads/Grant Awardees .....	7 reports .....	80 hours .....	560

**Total Responses:** 119.

**Estimated Total Annual Burden:** 970 hours (FRA Burden = 662 hours; HHS Burden = 308 hours).

**Status:** Re-Approval under Regular Clearance Procedures.

**Title:** State Highway-Rail Grade Crossing Action Plans.

**OMB Control Number:** 2130-0589.

**Abstract:** Section 202 of the Rail Safety Improvement Act (RSIA) of 2008 required the Secretary of Transportation (delegated to the Federal Railroad Administrator by 49 CFR 1.49) to identify the 10 States that have had the most-highway-rail grade crossing collisions, on average, over the past three years, and to require those States to develop State highway-rail grade crossing action plans, within a

reasonable period of time, as determined by the Secretary. Section 202 of the law further provided that these plans must identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations, and must focus on crossings that have experienced multiple accidents or are at high risk for such accidents.

Section 202 also provided the following: The Secretary will provide assistance to the States in developing and carrying out such plans, as appropriate; the plans may be coordinated with other State or Federal planning requirements; the plans will cover a period of time determined to be appropriate by the Secretary; and the Secretary may condition the awarding of

any grants under 49 U.S.C. 20158, 20167, or 22501, to a State identified under this section, on the development of such State's plan.

Lastly, Section 202 provided a review and approval process under which, not later than 60 days after the Secretary receives such a State action plan, the Secretary must review and either approve or disapprove it. In the event that the proposed plan is disapproved, Section 202 indicates that the Secretary must notify the affected State as to the specific areas in which the proposed plan is deficient, and the State must correct all deficiencies within 30 days following receipt of written notice from the Secretary.

FRA uses the collection of information to ensure that States meet

the Congressional mandate and devise and implement suitable plans to reduce/eliminate troublingly high numbers of highway-rail grade collisions in their States. FRA reviews grade these crossing action plans and grade crossing action plan revisions to ensure that these plans include the following: (1) Identify

specific solutions for improving safety at highway-rail grade crossings, including highway-rail grade crossing closures or grade separations, (2) Focus on crossings that have experienced multiple accidents or are at high risk for such accidents, and (3) Cover a five-year period of time.

Form Number(s): N/A.  
 Affected Public: States.  
 Respondent Universe: 10 States.  
 Frequency of Submission: On occasion.  
 Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours
234.11—State Highway-Rail Grade Crossing Action Plans.	10 States .....	10 plans .....	600	6,000
—Revised Grade Crossing Action Plans After FRA Review.	10 States .....	5 plans .....	80	600

Total Responses: 15.  
 Estimated Total Annual Burden: 6,400 hours.  
 Type of Request: Re-Approval of a Currently Approved Information Collection.  
 Status: Regular Review.  
 Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.  
 Issued in Washington, DC, on May 20, 2013.

Rebecca Pennington,  
 Chief Financial Officer, Federal Railroad Administration.  
 [FR Doc. 2013–12436 Filed 5–24–13; 8:45 am]  
 BILLING CODE 4910–06–P

**DEPARTMENT OF TRANSPORTATION**  
**Federal Railroad Administration**

**Environmental Impact Statement for Tulsa—Oklahoma City Passenger Rail Corridor, Oklahoma, Lincoln, Creek, and Tulsa Counties, OK**

**AGENCY:** Federal Railroad Administration (FRA), DOT.  
**ACTION:** Notice of Intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** FRA is issuing this notice to advise the public that FRA and the Oklahoma Department of Transportation (ODOT) Rail Division intend to prepare an EIS pursuant to the National Environmental Policy Act of 1969 (NEPA) for the State of Oklahoma High-Speed Rail Initiative: Tulsa—Oklahoma City Passenger Rail Corridor Investment Plan in Oklahoma, Lincoln, Creek, and Tulsa counties, Oklahoma. The EIS will evaluate passenger rail alternatives for

the approximately 106-mile corridor between Tulsa and Oklahoma City, which currently has no passenger rail service. This corridor is part of the South Central High Speed Rail Corridor and is a federally-designated high-speed rail (HSR) corridor. ODOT envisions the Tulsa—Oklahoma City passenger rail corridor to be a new, dedicated HSR line for the majority of its length.

**DATES:** FRA invites the public, governmental agencies, and all other interested parties to comment on the scope of the EIS. All such comments should be provided in writing, within thirty (30) days of the publication of this notice, at the address listed below. Comments may also be provided orally or in writing at the scoping meetings for the Project. Scoping meeting dates, times and locations, in addition to related Project information can be found online at [www.TulsaOKCRailCorridor.com](http://www.TulsaOKCRailCorridor.com).

**ADDRESSES:** Written comments on the scope of the EIS may be mailed or emailed within thirty (30) days of the publication of this notice to Catherine Dobbs, Transportation Industry Analyst, Office of Railroad Policy and Development, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, or [catherine.dobbs@dot.gov](mailto:catherine.dobbs@dot.gov); or Johnson Bridgwater, Federal Programs Manager, Oklahoma Department of Transportation Rail Division, 200 NE. 21st Street, Oklahoma City, OK 73105–3204.

**FOR FURTHER INFORMATION CONTACT:** Catherine Dobbs, Transportation Industry Analyst, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington 20590, telephone (202) 493–6347, [catherine.dobbs@dot.gov](mailto:catherine.dobbs@dot.gov), or Johnson Bridgwater, Federal Programs Manager, Oklahoma Department of Transportation Rail Division, 200 NE. 21st Street,

Oklahoma City, OK 73105–3204, telephone (405) 521–4203.  
**Environmental Review Process:** The EIS will be prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA and the FRA’s Procedures for Considering Environmental Impacts as set forth in 64 FR 28545 dated May 26, 1999 (Environmental Procedures). The EIS will also address Section 106 of the National Historic Preservation Act, Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. 303) and other applicable Federal and state laws and regulations. The study will result in a NEPA document that will address overall issues of concern, including but not limited to:

- Describing the purpose and need for the proposed action.
- Describing the environment likely to be affected by the proposed action.
- Developing evaluation criteria to identify alternatives that meet the purpose and need of the proposed action.
- Identifying the range of reasonable alternatives that satisfy the purpose and need for the proposed action.
- Developing the no-build alternative to serve as a baseline for comparison.
- Describing and evaluating the potential environmental impacts and mitigation associated with the proposed alternatives.

**SUPPLEMENTARY INFORMATION:** The Federal Railroad Administration, in cooperation with the Oklahoma Department of Transportation (ODOT), will prepare the EIS for the State of Oklahoma High-Speed Rail Initiative: Tulsa—Oklahoma City Passenger Rail Corridor Investment Plan. The proposed route would begin in Oklahoma City at the Santa Fe Depot and proceed easterly toward Tulsa, terminating at the Union Station in Tulsa. This route is an

important component of the South Central High-Speed Rail Corridor. Passenger trains would travel at speeds up to 125 miles per hour. As part of the EIS, various alternative rail line routes will be analyzed including shared use options with the BNSF Railway, Union Pacific Railroad, Stillwater Central Railroad and the Tulsa Sapulpa Union Railroad. Dedicated high-speed passenger rail lines and/or a combination of dedicated and shared use corridors will also be considered. In addition, the EIS will analyze the potential impacts of locations/modifications of stations, power or fueling stations, and maintenance facilities to support passenger rail operations.

The EIS will complete an analysis of passenger rail alternatives in the study area and evaluate the environmental impacts using a combination of Geographic Information System (GIS) data, field investigations and site visits/sampling where necessary. The primary environmental resources located within the study area that may be affected are: Agricultural, residential, commercial, and industrial properties; streams and floodplains; wetlands; and open space. FRA and ODOT will seek to avoid and minimize impacts to these resources, as well as cultural resources and protected lands. Minimization and mitigation measures will be identified and committed to within the EIS where appropriate.

In accordance with the NEPA, the FRA and ODOT will invite comments and suggestions regarding the scope of the project from all interested parties to ensure that all issues are addressed related to this proposal and any significant impacts are identified. Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, Native American tribes, and private organizations who might have previously expressed or who are known to have an interest in this project. Federal agencies with jurisdiction by law or special expertise with respect to potential environmental issues will be requested to act as a Cooperating Agency in accordance with 40 CFR 150.16.

ODOT will lead the outreach activities beginning with scoping meetings (dates to be determined). Public involvement initiatives including public meetings, project Web site, and outreach will be held throughout the course of this study. Opportunities for public participation will be announced through mailings, notices, advertisements, press releases and a project Web site, accessible at

[www.TulsaOKCRailCorridor.com](http://www.TulsaOKCRailCorridor.com). One or more public hearings will be held after the draft EIS is released and made available for public and agency review. Public notice will be given for the time and place of public hearings.

Comments or questions concerning this proposed action and the EIS are invited from all interested parties and should be directed to the FRA at the address provided above.

Issued in Washington, DC, on May 15, 2013.

**Corey Hill,**

*Director, Office of Passenger and Freight Programs.*

[FR Doc. 2013-12565 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2013-0059]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BOND VOYAGE; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-built requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before June 27, 2013.

**ADDRESSES:** Comments should refer to docket number MARAD-2013-0059. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-0903, Email [Linda.Williams@dot.gov](mailto:Linda.Williams@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel BOND VOYAGE is:

*Intended Commercial Use of Vessel:* "6-pack non-inspected harbor tours and whale watching, 6 passengers or less, in and around home port of Marina Del Rey, California only".

*Geographic Region:* "California only".

The complete application is given in DOT docket MARAD-2013-0059 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: May 20, 2013.

By Order of the Maritime Administrator.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2013-12485 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[Docket No. NHTSA–2013–0072]

**Technical Report on the Injury Vulnerability of Older Occupants and Women**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for comments on technical report.

**SUMMARY:** This notice announces NHTSA's publication of a technical report comparing the injury and fatality risk in crashes of older and younger vehicle occupants and of male and female occupants. The report's title is: *Injury Vulnerability and Effectiveness of Occupant Protection Technologies for Older Occupants and Women*.

**DATES:** Comments must be received no later than September 25, 2013.

**ADDRESSES:**

**Report:** The technical report is available on the Internet for viewing in PDF format at <http://www-nrd.nhtsa.dot.gov/Pubs/811766.pdf>. You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Charles J. Kahane (NVS–431), National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue SE., Washington, DC 20590.

**Comments:** You may submit comments [identified by Docket Number NHTSA–2013–0072] by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 1–202–493–2251.
- **Mail:** Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- **Hand Delivery:** West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. You may call Docket Management at 202–366–9826.

**Instructions:** For detailed instructions on submitting comments, see the Procedural Matters section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Kahane, Chief, Evaluation

Division, NVS–431, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–2560. Email: [chuck.kahane@dot.gov](mailto:chuck.kahane@dot.gov).

**SUPPLEMENTARY INFORMATION:** Aging increases a person's fragility (likelihood of injury given a physical insult) and frailty (chance of dying from a specific injury). Young adult females are more fragile than males of the same age, but later in life women are less frail than their male contemporaries. Double-pair-comparison and logistic-regression analyses of 1975–2010 FARS, 1987–2007 MCOD, and 1988–2010 NASS–CDS data allow quantifying the effects of aging and gender on fatality and injury risk and studying how trends have changed as vehicle-safety technologies developed.

In crashes of cars and LTVs of the past 50 model years, fatality risk increases as occupants age, given similar physical insults, by an average of  $3.11 \pm .08$  percent per year that they age. Fatality risk is, on average,  $17.0 \pm 1.5$  percent higher for a female than for a male of the same age (but more so for young adults and much less so for elderly occupants). The relative risk increases for aging and females may have both intensified slightly from vehicles of the 1960s up to about 1990 (even while safety improvements greatly reduced the absolute risk for men and women of all age groups); since then, the added risk for females has substantially diminished, probably to less than half, while the increase for aging may also have diminished, but by a much smaller amount. AIS  $\geq 2$  nonfatal-injury risk increases only by  $1.58 \pm .35$  percent per year of aging, but it is  $28.8 \pm 6.0$  percent higher for a female than for a male.

Older occupants are susceptible to thoracic injuries, especially multiple rib fractures. Females are susceptible to neck and abdominal injuries and, at lower severity levels, highly susceptible to arm and leg fractures. Female drivers are especially vulnerable to leg fractures from toe-pan intrusion. All of the major occupant protection technologies in vehicles of recent model years have at least some benefit for adults of all age groups and of either gender; none of them are harmful for a particular age group or gender. Nevertheless, seat belts have been historically somewhat less effective for older occupants and female passengers, but more effective for female drivers. Frontal air bags are about equally effective across all ages; side air bags may be even more effective for older occupants than for young adults.

Air bags and other non-belt protection technologies are helping females just as much and quite possibly even more than they protect males; this may have contributed to shrinking the historical risk increase for females relative to males of the same age.

**Procedural Matters**

*How can I influence NHTSA's thinking on this subject?*

NHTSA welcomes public review of the technical report. NHTSA will submit to the Docket a response to the comments and, if appropriate, will supplement or revise the report.

*How do I prepare and submit comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2013–0072) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://www.regulations.gov>.

Please send two paper copies of your comments to Docket Management, fax them, or use the Federal eRulemaking Portal. The mailing address is U. S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Charles J. Kahane, Chief, Evaluation Division, NVS–431, National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue SE., Washington, DC 20590 (or email them to [chuck.kahane@dot.gov](mailto:chuck.kahane@dot.gov)). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

*How can I be sure that my comments were received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. You may also periodically access <http://www.regulations.gov> and enter the number for this docket (NHTSA–2013–0072) to see if your comments are on line.

*How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to U. S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit them via the Federal eRulemaking Portal.

*Will the agency consider late comments?*

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

*How can I read the comments submitted by other people?*

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. You may also read the materials at the

Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

**Authority:** 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

**James F. Simons,**

*Director, Office of Regulatory Analysis and Evaluation.*

[FR Doc. 2013–12520 Filed 5–24–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0119]

#### Pipeline Safety: Public Workshop on Integrity Verification Process

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is announcing a public workshop to be held on the concept of “Integrity Verification Process.” The Integrity Verification Process shares similar characteristics with fitness for service processes. At this workshop, the Pipeline and Hazardous Materials Safety Administration, the National Association of State Pipeline Safety Representatives and various other stakeholders will present information and seek comment on a proposed Integrity Verification Process that will help address several mandates set forth in Section 23, Maximum Allowable Operating Pressure, of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011.

**DATES:** The public meeting will be held on Wednesday, August 7, 2013. Written comments must be received by September 9, 2013.

**ADDRESSES:** The workshop will be held at a location, yet to be determined, in the Washington, DC metro area.

**Registration:** Members of the public may attend this free workshop. To help assure that adequate space is provided, all attendees are encouraged to register for the workshop in advance.

**Comments:** Members of the public may also submit written comments either before or after the workshop. Comments should reference Docket No. PHMSA–2013–0119. Comments may be submitted in the following ways:

- *E-Gov Web site:* <http://www.regulations.gov>. This site allows

the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.

**Hand Delivery:** DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Instructions:** Identify the docket number at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at <http://www.regulations.gov>.

Note: Comments will be posted without changes or edits to <http://www.regulations.gov> including any personal information provided. Please see the Privacy Act Statement heading below for additional information.

**Privacy Act Statement:** Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT’s complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477).

**Information on Services for Individuals with Disabilities:** For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Cheryl Whetsel at 202–366–4431 or by email at [cheryl.whetsel@dot.gov](mailto:cheryl.whetsel@dot.gov).

**FOR FURTHER INFORMATION CONTACT:** Cameron Satterthwaite, Office of Pipeline Safety, at 202–366–1319 or by email at [cameron.satterthwaite@dot.gov](mailto:cameron.satterthwaite@dot.gov), regarding the subject matter of this notice.

**SUPPLEMENTARY INFORMATION:** More details on this meeting, including the location, times, and agenda items, will be available on the meeting registration Web site at <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=91> as they become available. Please note that the public workshop will be webcast, and presentations will be available online at <http://www.phmsa.dot.gov/> after the conclusion of the meeting. The workshop will be open to members of the public.

Issued in Washington, DC, on May 22, 2013.

**Linda Daugherty,**

*Deputy Associate Administrator for Policy and Programs.*

[FR Doc. 2013-12592 Filed 5-24-13; 8:45 am]

**BILLING CODE 4910-60-P**

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## DEPARTMENT OF THE TREASURY

### Office of the Secretary

#### List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986,

the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq  
Kuwait  
Lebanon

Libya

Qatar

Saudi Arabia

Syria

United Arab Emirates

Yemen

Dated: May 20, 2013.

**Danielle Rolfes,**

*International Tax Counsel, Tax Policy.*

[FR Doc. 2013-12415 Filed 5-24-13; 8:45 am]

**BILLING CODE 4810-25-P**



# FEDERAL REGISTER

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Part II

## Department of the Interior

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for 38 Species on Molokai, Lanai, and Maui; Final Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R1-ES-2011-0098;  
4500030113]

RIN 1018-AX14

**Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for 38 Species on Molokai, Lanai, and Maui**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine endangered status under the Endangered Species Act of 1973 (Act), as amended, for 38 species on the Hawaiian Islands of Molokai, Lanai, and Maui, and reaffirm the listing of 2 endemic Hawaiian plants currently listed as endangered. In this final rule, we are also delisting the plant *Gahnia lanaiensis*, due to new information that this species is synonymous with *G. lacera*, a widespread species from New Zealand. The effect of this regulation is to conserve these 40 species under the Endangered Species Act.

**DATES:** This rule becomes effective on June 27, 2013.

**ADDRESSES:** This final rule is available on the Internet at <http://www.regulations.gov>. Comments and materials received, as well as supporting documentation used in preparing this final rule are available for public inspection, by appointment, during normal business hours, at U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850; telephone 808-792-9400; facsimile 808-792-9581.

**FOR FURTHER INFORMATION CONTACT:** Loyal Mehrhoff, Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850; by telephone at 808-792-9400; or by facsimile at 808-792-9581. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

*Why we need to publish a rule.* This is a final rule to list 38 species (35 plants and 3 tree snails) as endangered under the Act from the island cluster of Maui Nui (Molokai, Lanai, Maui, and

Kahoolawe) in the State of Hawaii. In addition, the rule reaffirms the listing of two endemic Hawaiian plants currently listed as endangered. Collectively, in this document we refer to these 40 species as the “Maui Nui species.”

*The basis for our action.* Under the Endangered Species Act, we determine that a species is endangered or threatened based on any of 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. We have determined that the 40 Maui Nui species are currently in danger of extinction throughout all their ranges, as the result of the following current and ongoing threats:

- All of these species face threats from the present destruction and modification of their habitat, primarily from introduced ungulates (such as feral pigs, goats, cattle, mouflon sheep, and axis deer) and the spread of nonnative plants.
- Thirteen plant species face threats from habitat destruction and modification from fire.
- All 37 plant species face threats from destruction and modification of their habitats from hurricanes, landslides, rockfalls, and flooding. In addition, hurricanes are a threat to all three tree snail species.
- Nine of these species face threats from habitat destruction and modification from drought.
- The projected effects of climate change will likely exacerbate the effects of the other threats to these species.
- There is a serious threat of widespread impacts of predation and herbivory on all 37 plant species by nonnative ungulates, rats, and invertebrates; and predation on the three tree snails by nonnative rats and invertebrates.
- Some of the plant species face the additional threat of trampling.
- The inadequacy of existing regulatory mechanisms (specifically inadequate protection of habitat and inadequate protection from the introduction of nonnative species) poses a current and ongoing threat to all 40 species.

- There are current and ongoing threats to 20 plant species and the 3 tree snail species due to factors associated with small numbers of populations and individuals.

- Five plant species face threats from hybridization and lack of or low levels of regeneration.

- These threats are exacerbated by these species’ inherent vulnerability to extinction from stochastic events at any time because of their endemism, small numbers of individuals and populations, and restricted habitats.

We fully considered comments from the public, including comments received during a public hearing and comments received from peer reviewers, on the proposed rule.

*Peer reviewers support our methods.* We obtained opinions from four knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and whether or not we had used the best available information. These peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule.

This document consists of a final rule to list 35 plant species and 3 tree snail species as endangered and reaffirms the listing as endangered for 2 plants (40 species total). We additionally delist the plant *Gahnia lanaiensis* due to taxonomic error.

**Previous Federal Actions**

Federal actions for these species prior to June 11, 2012, are outlined in our proposed rule (77 FR 34464), which was published on that date. Publication of the proposed rule opened a 60-day comment period, which was extended on August 9, 2012 (77 FR 47587), for an additional 30 days and closed on September 10, 2012. We published a public notice of the proposed rule on June 20, 2012, in the local Honolulu Star Advertiser, Maui Times, and Molokai Dispatch newspapers. On January 31, 2013 (78 FR 6785), we reopened the comment period for an additional 30 days on the entire June 11, 2012, proposed rule (77 FR 34464), as well as the draft economic analysis on the proposed critical habitat designation, and announced a public information meeting and hearing that we held in Kihei, Maui, on February 21, 2013. This second comment period closed on March 4, 2013. In total, we accepted public comments on the June 11, 2012, proposed rule for 120 days.

**Background**

On June 11, 2012, we published in the **Federal Register** (77 FR 34464) a proposed rule to list 38 species on the Hawaiian Islands of Molokai, Lanai, and Maui as endangered under the Endangered Species Act of 1973, as

amended (Act; 16 U.S.C. 1531 *et seq.*). We also proposed to reaffirm the listing of two endemic Hawaiian plants listed as endangered. We further proposed to designate critical habitat for 39 of these 40 plant and animal species, to designate critical habitat for 11 previously listed plant and animal species that do not have designated critical habitat, and to revise critical

habitat for 85 plant species already listed as endangered or threatened.

The final critical habitat determination for the Maui Nui species is still under development and undergoing Service review. It will publish in the **Federal Register** in the near future under Docket No. FWS-R1-ES-2013-0003. That document will also provide our final determinations regarding the name changes and

spelling corrections proposed in our June 1, 2012, proposed rule (77 FR 34464).

*Maui Nui Species Addressed in this Final Rule*

The table below (Table 1) provides the common name, scientific name, and listing status for the species that are the subject of this final rule.

TABLE 1—THE MAUI NUI SPECIES ADDRESSED IN THIS FINAL RULE

[Note that many of the species share the same common name]

Scientific name	Common name(s)	Listing Status
<b>Species Listed as Endangered</b>		
Plants:		
<i>Bidens campylotheca</i> ssp. <i>pentamera</i> .....	kookoolau .....	Endangered.
<i>Bidens campylotheca</i> ssp. <i>waihoiensis</i> .....	kookoolau .....	Endangered.
<i>Bidens conjuncta</i> .....	kookoolau .....	Endangered.
<i>Calamagrostis hillebrandii</i> .....	[NCN] <sup>1</sup> .....	Endangered.
<i>Canavalia pubescens</i> .....	awikiwiki .....	Endangered.
<i>Cyanea asplenifolia</i> .....	haha .....	Endangered.
<i>Cyanea duvalliorum</i> .....	haha .....	Endangered.
<i>Cyanea horrida</i> .....	haha nui .....	Endangered.
<i>Cyanea kunthiana</i> .....	haha .....	Endangered.
<i>Cyanea magnicalyx</i> .....	haha .....	Endangered.
<i>Cyanea maritae</i> .....	haha .....	Endangered.
<i>Cyanea mauiensis</i> .....	haha .....	Endangered.
<i>Cyanea munroi</i> .....	haha .....	Endangered.
<i>Cyanea obtusa</i> .....	haha .....	Endangered.
<i>Cyanea profuga</i> .....	haha .....	Endangered.
<i>Cyanea solanacea</i> .....	popolo .....	Endangered.
<i>Cyrtandra ferripilosa</i> .....	haiwale .....	Endangered.
<i>Cyrtandra filipes</i> .....	haiwale .....	Endangered.
<i>Cyrtandra oxybapha</i> .....	haiwale .....	Endangered.
<i>Festuca molokaiensis</i> .....	[NCN] .....	Endangered.
<i>Geranium hanaense</i> .....	nohoanu .....	Endangered.
<i>Geranium hillebrandii</i> .....	nohoanu .....	Endangered.
<i>Mucuna sloanei</i> var. <i>persericea</i> .....	sea bean .....	Endangered.
<i>Myrsine vaccinioides</i> .....	kolea .....	Endangered.
<i>Peperomia subpetiolata</i> .....	alaala wai nui .....	Endangered.
<i>Phyllostegia bracteata</i> .....	[NCN] .....	Endangered.
<i>Phyllostegia haliakalae</i> .....	[NCN] .....	Endangered.
<i>Phyllostegia pilosa</i> .....	[NCN] .....	Endangered.
<i>Pittosporum halophilum</i> .....	hoawa .....	Endangered.
<i>Pleomele fernaldii</i> .....	hala pepe .....	Endangered.
<i>Schiedea jacobii</i> .....	[NCN] .....	Endangered.
<i>Schiedea laui</i> .....	[NCN] .....	Endangered.
<i>Schiedea salicaria</i> .....	[NCN] .....	Endangered.
<i>Stenogyne kauaulaensis</i> .....	[NCN] .....	Endangered.
<i>Wikstroemia villosa</i> .....	akia .....	Endangered.
Animals:		
<i>Newcombia cumingi</i> .....	Newcomb's tree snail .....	Endangered.
<i>Partulina semicarinata</i> .....	Lanai tree snail .....	Endangered.
<i>Partulina variabilis</i> .....	Lanai tree snail .....	Endangered.
<b>Species Reevaluated for Listing</b>		
<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i> .....	haha .....	Endangered.
<i>Santalum haleakalae</i> var. <i>lanaiense</i> (synonym = <i>Santalum freycinetianum</i> var. <i>lanaiense</i> ) .....	iliahi .....	Endangered.

<sup>1</sup> NCN = no common name.

Taxonomic Changes Since Listing for Two Maui Nui Plant Species

At the time we listed *Cyanea grimesiana* ssp. *grimesiana* as endangered (61 FR 53108; October 10,

1996), we followed the taxonomic treatment of Lammers in Wagner *et al.* (1990, pp. 451–452). The distribution of *C. grimesiana* ssp. *grimesiana* as recognized at that time included the islands of Oahu, Molokai, Lanai, and

Maui. Subsequently, Lammers (1998, pp. 31–32) recognized morphological differences in the broadly circumscribed *Cyanea grimesiana* group and published new combinations for the plants reported from Maui (*C. mauiensis*) and

Lanai (*C. munroi*). Plants reported from Molokai were identified as either *C. munroi* or *C. grimesiana* ssp. *grimesiana*. In 2004, Lammers (pp. 85–87) recognized further differences in the plants reported from Maui and described a new species, *C. magnicalyx*, known only from west Maui. The range of *C. grimesiana* ssp. *grimesiana* now includes only Oahu and Molokai (Lammers 1998, pp. 31–32; Lammers 2004, pp. 84–85). Because the range of the listed entity has changed, we evaluated the effects of the five factors described in section 4(a)(1) of the Act on *C. grimesiana* ssp. *grimesiana* as currently recognized, and determine that this species warrants endangered status under the Act (see Summary of Factors Affecting the 40 Maui Nui Species, below).

We listed *Santalum freycinetianum* var. *lanaiense* as endangered (51 FR 3182; January 24, 1986) in 1986. At that time, the species was known only from the island of Lanai. Our recovery plan for this species, published in 1995, recognized that the range of the species additionally includes west Maui, as well as Lanai, based on new information (USFWS 1995a, pp. 35–36). In her revision of the Hawaiian species of *Santalum*, Harbaugh *et al.* (2010, pp. 834–835) moved the plants previously recognized as *S. freycinetianum* var. *lanaiense* to *S. haleakalae* var. *lanaiense*. The range of *S. haleakalae* var. *lanaiense* now includes Molokai, Lanai, and east and west Maui (HBMP 2010; Harbaugh *et al.* 2010, pp. 834–835). Because the range of the listed entity has changed, we evaluated the effects of the five factors described in section 4(a)(1) of the Act on *S. haleakalae* var. *lanaiense* as currently recognized and determine that this species as described herein warrants its status as endangered under the Act (see Summary of Factors Affecting the 40 Maui Nui Species, below).

#### Delisting of *Gahnia lanaiensis*

*Gahnia lanaiensis* was listed as endangered in 1991 (56 FR 47686; September 20, 1991). At that time, this species was known from 15 or 16 large “clumped” plants growing on the summit of Lanaihale, on the island of Lanai. The distribution of these plants was considered to be the entire known range of the species. *Gahnia lanaiensis* was listed as threatened due the small number of individuals remaining and resulting negative consequences of very small populations, which increased the potential for extinction of the species due to stochastic events; the potential

for destruction of plants due their proximity to a popular hiking and jeep trail; and habitat degradation and destruction by feral ungulates and nonnative plants (56 FR 47686; September 20, 1991).

In a recently published paper, Koyama *et al.* (2010, pp. 29–30) found that based on spikelet and achene characters, *Gahnia lanaiensis* is a complete match for *G. lacera*, a species endemic to New Zealand. Koyama further states that *G. lacera* likely arrived on Lanai, either intentionally or unintentionally, through the restoration efforts of George Munro, the Resident Manager of Lanai Ranch from 1911 to 1930 (Koyama 2010, p. 30). Born and raised in New Zealand, Munro is known to have used seeds of New Zealand’s native plants for reforestation efforts on Lanai (Koyama 2010, p. 30).

Because *Gahnia lanaiensis* is not believed to be a uniquely valid species; is synonymous with *G. lacera*, a species endemic to New Zealand where it is known to be common (Piha New Zealand Plant Conservation Network 2010, in litt.); and is not in danger of extinction or likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, we delist *G. lanaiensis* due to error in the original listing. We did not receive any public comments on our proposed delisting of *G. lanaiensis* due to taxonomic error.

#### An Ecosystem-based Approach

On the islands of Molokai, Lanai, and Maui, as on most of the Hawaiian Islands, native species that occur in the same habitat types (ecosystems) depend on many of the same biological features and the successful functioning of that ecosystem to survive. We have therefore organized the species addressed in this final rule by common ecosystem. Although the listing determination for each species is analyzed separately, we have organized the individual analysis for each species within the context of the broader ecosystem in which it occurs to avoid redundancy. In addition, native species that share ecosystems often face a suite of common factors that may negatively impact them, and ameliorating or eliminating these threats for each individual species often requires the exact same management actions in the exact same areas. Effective management of these threats often requires implementation of conservation actions at the ecosystem scale to enhance or restore critical ecological processes and provide for long-term viability of those species in their native

environment. Thus, by taking this approach, we hope to not only organize this rule efficiently, but also to more effectively focus conservation management efforts on the common threats that occur across these ecosystems. Those efforts would facilitate restoration of ecosystem functionality for the recovery of each species, and provide conservation benefits for associated native species, thereby potentially precluding the need to list other species under the Act that occur in these shared ecosystems. In addition, this approach is in concordance with one of the primary stated purposes of the Act, as stated in section 2(b): “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.”

We are listing the plants *Bidens campylotheca* ssp. *pentamera*, *Bidens campylotheca* ssp. *waihoiensis*, *Bidens conjuncta*, *Calamagrostis hillebrandii*, *Cyanea asplenifolia*, *Cyanea duvalliorum*, *Cyanea horrida*, *Cyanea kunthiana*, *Cyanea magnicalyx*, *Cyanea maritae*, *Cyanea mauiensis*, *Cyanea munroi*, *Cyanea obtusa*, *Cyanea profuga*, *Cyanea solanacea*, *Cyrtandra ferripilosa*, *Cyrtandra filipes*, *Cyrtandra oxybapha*, *Festuca molokaiensis*, *Geranium hanaense*, *Geranium hillebrandii*, *Mucuna sloanei* var. *persericea*, *Myrsine vaccinioides*, *Peperomia subpetiolata*, *Phyllostegia bracteata*, *Phyllostegia haliakalae*, *Phyllostegia pilosa*, *Pittosporum halophilum*, *Pleomele fernaldii*, *Schiedea jacobii*, *Schiedea laui*, *Schiedea salicaria*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*; and the tree snails *Newcombia cumingi*, *Partulina semicarinata* and *Partulina variabilis*, from the islands of Molokai, Lanai, and Maui as endangered species. We are also listing the plant *Canavalia pubescens*, known from the islands of Niihau, Kauai, Lanai, and Maui as an endangered species. In addition, we reaffirm the listing of two plant species, *Santalum haleakalae* var. *lanaiense* (formerly *Santalum freycinetianum* var. *lanaiense*) from the islands of Molokai, Lanai, and Maui, and *Cyanea grimesiana* ssp. *grimesiana*, known from Oahu and Molokai, as endangered species. These 40 species (37 plants and 3 tree snails) are found in 10 ecosystem types: Coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane wet, montane mesic, subalpine, dry cliff, and wet cliff (Table 3).

TABLE 3—THE 40 MAUI NUI SPECIES <sup>1</sup> AND THE ECOSYSTEMS UPON WHICH THEY DEPEND

Ecosystem	Island		
	Molokai	Lanai	Maui
Coastal .....	<i>Pittosporum halophilum</i> .....	<i>Canavalia pubescens</i>	
Lowland Dry .....	.....	<i>Pleomele fernaldii</i> .....	<i>Bidens campylotheca</i> ssp. <i>pentamera</i> . <i>Canavalia pubescens</i> . <i>Cyanea obtusa</i> . <i>Santalum haleakalae</i> var. <i>lanaiense</i> . <i>Schiedea salicaria</i> .
Lowland Mesic ...	<i>Cyanea profuga</i> .....	<i>Pleomele fernaldii</i> .....	<i>Bidens campylotheca</i> ssp. <i>pentamera</i> . <i>Cyanea asplenifolia</i> . <i>Cyanea mauiensis</i> . <sup>2</sup> <i>Santalum haleakalae</i> var. <i>lanaiense</i>
	<i>Cyanea solanacea</i> .....	<i>Santalum haleakalae</i> var. <i>lanaiense</i> .....	
	<i>Cyrtandra filipes</i> .....	.....	
	<i>Festuca molokaiensis</i> .....	.....	
	<i>Phyllostegia haliakalae</i>		
	<i>Phyllostegia pilosa</i>		
	<i>Santalum haleakalae</i> var. <i>lanaiense</i>		
Lowland Wet .....	<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i> .....	<i>Pleomele fernaldii</i> .....	<i>Bidens campylotheca</i> ssp. <i>waihoiensis</i> . <i>Bidens conjuncta</i> . <i>Cyanea asplenifolia</i> . <i>Cyanea duvalliorum</i> . <i>Cyanea kunthiana</i> . <i>Cyanea magnicalyx</i> . <i>Cyanea maritae</i> . <i>Cyrtandra filipes</i> . <i>Mucuna sloanei</i> var. <i>persericea</i> . <i>Phyllostegia bracteata</i> <i>Santalum haleakalae</i> var. <i>lanaiense</i> . <i>Wikstroemia villosa</i> . <i>Newcombia cumingi</i> . <i>Santalum haleakalae</i> var. <i>lanaiense</i> .
	<i>Cyanea solanacea</i> .....	<i>Santalum haleakalae</i> var. <i>lanaiense</i> .....	
	<i>Cyrtandra filipes</i> .....	<i>Partulina semicarinata</i> .....	
	.....	<i>Partulina variabilis</i> .....	
Montane Dry .....	.....	.....	<i>Santalum haleakalae</i> var. <i>lanaiense</i> . <i>Bidens campylotheca</i> ssp. <i>pentamera</i> . <i>Cyanea horrida</i> . <i>Cyanea kunthiana</i> . <i>Cyanea magnicalyx</i> . <i>Cyanea obtusa</i> . <i>Cyrtandra ferripilosa</i> . <i>Cyrtandra oxybapha</i> <i>Geranium hillebrandii</i> . <i>Phyllostegia bracteata</i> . <i>Phyllostegia haliakalae</i> . <i>Santalum haleakalae</i> var. <i>lanaiense</i> . <i>Stenogyne kauaulaensis</i> . <i>Wikstroemia villosa</i> .
Montane Mesic ..	<i>Cyanea solanacea</i> .....	.....	
	<i>Santalum haleakalae</i> var. <i>lanaiense</i> .....	.....	
Montane Wet .....	<i>Cyanea profuga</i> .....	<i>Santalum haleakalae</i> var. <i>lanaiense</i> .....	<i>Bidens campylotheca</i> ssp. <i>pentamera</i> . <i>Bidens campylotheca</i> ssp. <i>waihoiensis</i> . <i>Bidens conjuncta</i> . <i>Calamagrostis hillebrandii</i> . <i>Cyanea duvalliorum</i> . <i>Cyanea horrida</i> . <i>Cyanea kunthiana</i> . <i>Cyanea maritae</i> . <i>Cyrtandra ferripilosa</i> . <i>Cyrtandra oxybapha</i> . <i>Geranium hanaense</i> . <i>Geranium hillebrandii</i> . <i>Myrsine vaccinioides</i> . <i>Peperomia subpetiolata</i> . <i>Phyllostegia bracteata</i> . <i>Phyllostegia pilosa</i> . <i>Schiedea jacobii</i> . <i>Wikstroemia villosa</i> .
	<i>Cyanea solanacea</i> .....	<i>Partulina semicarinata</i> .....	
	<i>Phyllostegia pilosa</i> .....	<i>Partulina variabilis</i> .....	
	<i>Schiedea laui</i> .....	.....	
Subalpine .....	.....	.....	<i>Phyllostegia bracteata</i> . <i>Bidens campylotheca</i> ssp. <i>pentamera</i> . <i>Cyanea mauiensis</i> . <sup>2</sup> <i>Bidens campylotheca</i> ssp. <i>pentamera</i> . <i>Bidens campylotheca</i> ssp. <i>waihoiensis</i> . <i>Bidens conjuncta</i> . <i>Cyanea horrida</i> . <i>Cyanea magnicalyx</i> . <i>Cyrtandra filipes</i> . <i>Phyllostegia bracteata</i> . <i>Phyllostegia haliakalae</i> .
Dry Cliff .....	<i>Phyllostegia haliakalae</i> .....	<i>Pleomele fernaldii</i> .....	
	.....	<i>Pleomele fernaldii</i> .....	
Wet Cliff .....	<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i> .....	<i>Cyanea munroi</i> .....	
	<i>Cyanea munroi</i> .....	<i>Phyllostegia haliakalae</i> .....	
	.....	<i>Pleomele fernaldii</i> .....	
	.....	<i>Santalum haleakalae</i> var. <i>lanaiense</i> .....	
	.....	<i>Partulina semicarinata</i> .....	
	.....	<i>Partulina variabilis</i> .....	

TABLE 3—THE 40 MAUI NUI SPECIES<sup>1</sup> AND THE ECOSYSTEMS UPON WHICH THEY DEPEND—Continued

Ecosystem	Island		
	Molokai	Lanai	Maui
			<i>Santalum haleakalae</i> var. <i>lanaiense</i> .

<sup>1</sup> 37 species are plants and 3 species (*Newcombia cumingi*, *Partulina semicarinata*, and *Partulina variabilis*) are tree snails.  
<sup>2</sup> Not seen since the 1800s.

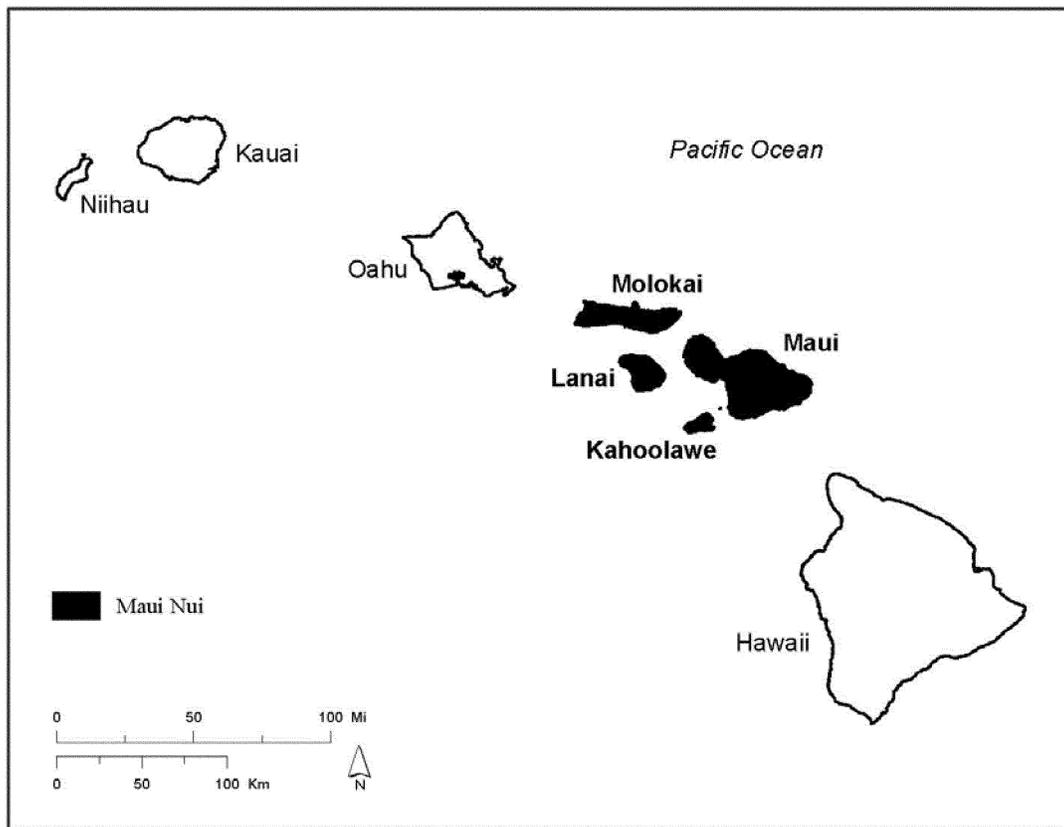
For each species, we identified and evaluated those factors that adversely impact the species and that may be common to all of the species at the ecosystem level. For example, the degradation of habitat by nonnative ungulates is considered a threat to 37 of the 40 species, and is likely a threat to many, if not most or even all, of the native species within a given ecosystem. We consider such a threat to be an “ecosystem-level threat,” as each individual species within that ecosystem faces an adverse impact that is essentially identical in terms of the nature of the its impact, its severity, its

imminence, and its scope. Beyond ecosystem-level impacts, we further identified and evaluated factors that may represent unique adverse impacts to certain species, but do not apply to all species under consideration within the same ecosystem. For example, the threat of predation by nonnative snails is unique to the three tree snails in this rule, and is not applicable to any of the other 37 species. We have identified such threats, which apply only to certain species within the ecosystems addressed here, as “species-specific threats.”

*The Islands of Maui Nui*

The islands of Maui Nui include Molokai, Lanai, Maui, and Kahoolawe (Figure 1). During the last Ice Age, about 21,000 years ago, when sea levels were approximately 459 feet (ft) (140 meters (m)) below their present level, these four islands were connected by a broad lowland plain and unified as a single island (Nullet *et al.* 1998, p. 64; Ziegler 2002, p. 22). This land bridge allowed the movement and interaction of each island’s flora and fauna and contributed to the present close relationships of their biota (Nullet *et al.* 1998, p. 64).

Figure 1. Map of the Hawaiian Islands that collectively comprise Maui Nui.



The island of Molokai is the fifth largest of the eight main Hawaiian Islands. It was formed from three shield

volcanoes and is about 260 square miles (sq mi) (673 square kilometers (sq km)) in area (Juvik and Juvik 1998, pp. 11,

13). The volcanoes that make up most of the land mass of Molokai include the west and east Molokai mountains, and

a volcano that formed Kalaupapa peninsula. The taller and larger east Molokai mountain rises 4,970 ft (1,514 m) above sea level and comprises roughly 50 percent of the island's area (Juvik and Juvik 1998, p. 11). Topographically, the windward (north) side of east Molokai differs from the leeward (south) side. Precipitous cliffs line the windward coast and deep valleys dissect the coastal area. The annual rainfall on the windward side of Molokai is 75 to more than 150 inches (in) (200 to more than 375 centimeters (cm)) (Giambelluca and Schroeder 1998, p. 50).

The island of Lanai is the sixth largest of the eight main Hawaiian Islands, located southeast of Molokai and northwest of Hawaii Island. It is located in the lee or rain shadow of the taller west Maui mountains. Lanai was formed from a single shield volcano and built by eruptions at its summit and along three rift zones (Clague 1998, p. 42). The island is about 140 sq mi (364 sq km) in area and its highest point, Lanaihale, has an elevation of 3,366 ft (1,027 m) (Clague 1998, p. 42; Juvik and Juvik 1998, p. 13; Walker 1999, p. 21). Annual rainfall on the summit is 30 to 40 in (76 to 102 cm), but is considerably less, 10 to 20 in (25 to 50 cm), over much of the rest of the island (Giambelluca and Schroeder 1998, p. 56).

The island of Maui is the second largest of the eight main Hawaiian Islands, located southeast of Molokai and northwest of Hawaii Island (Juvik and Juvik 1998, p. 14). It was formed from two shield volcanoes and resulted in the west Maui mountains, which are about 1.3 million years old, and Haleakala on east Maui, which is about 750,000 years old (Juvik and Juvik 1998, p. 14). West and east Maui are connected by the central Maui isthmus, and the island's total land area is 729 sq mi (1,888 sq km) (Juvik and Juvik 1998, p. 14; Walker 1999, p. 21). The west Maui mountains have been eroded by streams that created deep valleys and ridges. The highest point on west Maui is Puu Kukui at 5,788 ft (1,764 m) in elevation, with an average rainfall greater than 400 in (1,020 cm) per year (Juvik and Juvik 1998, p. 14; Wagner *et al.* 1999b, p. 41; Giambelluca *et al.* 2011–*Online Rainfall Atlas of Hawaii*). East Maui's Haleakala volcano remains volcanically active, with its last eruption occurring less than 500 years ago (Sherrod *et al.* 2007, p. 40). Haleakala rises 10,023 ft (3,055 m) in elevation, and despite being younger in age, possesses areas of diverse vegetation equal or greater than the older and more eroded west Maui mountains (Price 2004, p. 493). Rainfall

on the slopes of Haleakala ranges from about 35 in (89 cm) to over 400 in (1,000 cm) per year, with its windward (northeastern) slope receiving the most precipitation (Giambelluca *et al.* 2011–*Online Rainfall Atlas of Hawaii*). However, Haleakala's crater is a dry cinder desert because it is above the level at which precipitation develops and is sheltered from moisture-laden winds usually associated with orographic (mountain) rainfall (Giambelluca and Schroeder 1998, p. 55).

The island of Kahoolawe is the smallest of the eight main Hawaiian Islands, located southeast of Molokai and northwest of Hawaii Island. The island is about 45 sq mi (116 sq km) in area, and was formed from a single shield volcano (Clague 1998, p. 42; Juvik and Juvik 1998, pp. 7, 16). The maximum elevation on Kahoolawe is 1,477 ft (450 m) at the summit of Puu Moaulanui (Juvik and Juvik 1998, pp. 15–16). Kahoolawe is in the rain shadow of Haleakala and is arid, receiving no more than 25 in (65 cm) of rainfall annually (Juvik and Juvik 1998, p. 16; Mitchell *et al.* 2005, pp. 6–66).

The vegetation of the islands of Maui Nui has undergone extreme alterations because of past and present land use and other activities. Land with rich soils was altered by the early Hawaiians and, more recently, converted to agricultural use in the production of sugar and pineapple (Gagne and Cuddihy 1999, p. 45) or pasture. For example, on Haleakala, on the island of Maui, the upland slopes have been converted to diversified agriculture and cattle ranches (Juvik and Juvik 1998, p. 16). Archaeological surveys suggest that the early Hawaiians did not live in the highest areas of Haleakala but instead inhabited the area temporarily for religious ceremonies, the creation of adzes (tools used for smoothing or carving wood), and bird hunting (Burney 1997, p. 448). Intentional and inadvertent introduction of alien plant and animal species has also contributed to the reduction in range of native vegetation on the islands of Maui Nui (throughout this rule, the terms “alien,” “feral,” “nonnative,” and “introduced” all refer to species that are not naturally native to the Hawaiian Islands). Currently, most of the native vegetation on the islands persists on upper elevation slopes, valleys and ridges; steep slopes; precipitous cliffs; valley headwalls; and other regions where unsuitable topography has prevented urbanization and agricultural development, or where inaccessibility has limited encroachment by nonnative plant and animal species.

### Maui Nui Ecosystems

There are 11 different ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, alpine, dry cliff, and wet cliff) recognized on the islands of Maui Nui. The 40 species in this rule occur in 10 of these ecosystems (all except the alpine). All 11 Maui Nui ecosystems are described in the following section.

#### Coastal

The coastal ecosystem is found on all of the main Hawaiian Islands, with the highest native species diversity in the least populated coastal areas of Kauai, Oahu, Molokai, Maui, Kahoolawe, Hawaii Island, and their associated islets. On Molokai, Lanai, Maui, and Kahoolawe, the coastal ecosystem includes mixed herblands, shrublands, and grasslands, from sea level to 980 ft (300 m) in elevation, generally within a narrow zone above the influence of waves to within 330 ft (100 m) inland, sometimes extending further inland if strong prevailing onshore winds drive sea spray and sand dunes into the lowland zone (The Nature Conservancy (TNC) 2006a). The coastal ecosystem is typically dry, with annual rainfall of less than 20 in (50 cm); however, windward rainfall may be high enough (up to 40 in (100 cm)) to support mesic-associated and sometimes wet-associated vegetation (Gagne and Cuddihy 1999, pp. 54–66). Biological diversity is low to moderate in this ecosystem, but may include some specialized plants and animals such as nesting seabirds and the endangered plant *Sesbania tomentosa* (ohai) (TNC 2006a). The plants *Canavalia pubescens* and *Pittosporum halophilum*, which are listed as endangered in this final rule, are reported in this ecosystem on Molokai or Lanai (Hawaii Biodiversity and Mapping Program (HBMP) 2008; TNC 2007).

#### Lowland Dry

The lowland dry ecosystem includes shrublands and forests generally below 3,300 ft (1,000 m) elevation that receive less than 50 in (130 cm) annual rainfall, or are in otherwise prevailing dry substrate conditions that range from weathered reddish silty loams to stony clay soils, rocky ledges with very shallow soil, or relatively recent little-weathered lava (Gagne and Cuddihy 1999, p. 67). Areas consisting of predominantly native species in the lowland dry ecosystem are now rare; this ecosystem is found on the islands of Kauai, Oahu, Molokai, Lanai, Maui, Kahoolawe and Hawaii, and is best

represented on the leeward sides of the islands (Gagne and Cuddihy 1999, p. 67). On the islands of Maui Nui, this ecosystem is typically found on the leeward side of the mountains (Gagne and Cuddihy 1999, p. 67; TNC 2006b). Native biological diversity is low to moderate in this ecosystem, and includes specialized animals and plants such as the Hawaiian owl or pueo (*Asio flammeus sandwichensis*) and *Santalum ellipticum* (iliahialoe or coast sandalwood) (Wagner *et al.* 1999c, pp. 1,220–1,221; TNC 2006b). The plants *Bidens campylotheca* ssp. *pentamera*, *Canavalia pubescens*, *Cyanea obtusa*, *Pleomele fernaldii*, *Santalum haleakalae* var. *lanaiense*, and *Schiedea salicaria*, which are listed as endangered in this final rule, are reported from this ecosystem on Lanai or Maui (HBMP 2008; TNC 2007).

#### Lowland Mesic

The lowland mesic ecosystem includes a variety of grasslands, shrublands, and forests, generally below 3,300 ft (1,000 m) elevation, that receive between 50 and 75 in (130 and 190 cm) annual rainfall (TNC 2006c). In the Hawaiian Islands, this ecosystem is found on Kauai, Molokai, Lanai, Maui, and Hawaii, on both windward and leeward sides of the islands. On the islands of Maui Nui, this ecosystem is typically found on the leeward slopes of Molokai, Lanai, and Maui (Gagne and Cuddihy 1999, p. 75; TNC 2006c). Native biological diversity is high in this system (TNC 2006c). The plants *Bidens campylotheca* ssp. *pentamera*, *Cyanea asplenifolia*, *C. profuga*, *C. solanacea*, *Cyrtandra filipes*, *Festuca molokaiensis*, *Phyllostegia haliakalae*, *P. pilosa*, *Pleomele fernaldii*, and *Santalum haleakalae* var. *lanaiense*, which are listed as endangered in this final rule, are reported in this ecosystem on this islands of Molokai, Lanai, or Maui (HBMP 2008; TNC 2007). In addition, *Cyanea mauiensis*, also listed as endangered in this final rule, may have occurred in this ecosystem on Maui, but this species has not been observed for over 100 years. The species-specific habitat needs of *Cyanea mauiensis* are not known.

#### Lowland Wet

The lowland wet ecosystem is generally found below 3,300 ft (1,000 m) elevation on the windward sides of the main Hawaiian Islands, except Niihau and Kahoolawe (Gagne and Cuddihy 1999, p. 85; TNC 2006d). These areas include a variety of wet grasslands, shrublands, and forests that receive greater than 75 in (190 cm) annual precipitation, or are in otherwise wet

substrate conditions (TNC 2006d). On the islands of Maui Nui, this system is best developed in wet valleys and slopes on Molokai, Lanai, and Maui (TNC 2006d). Native biological diversity is high in this system (TNC 2006d). The plants *Bidens campylotheca* ssp. *waihoiensis*, *B. conjuncta*, *Cyanea asplenifolia*, *C. duvalliorum*, *C. grimesiana* ssp. *grimesiana*, *C. kunthiana*, *C. magnicalyx*, *C. maritae*, *C. solanacea*, *Cyrtandra filipes*, *Mucuna sloanei* var. *persericea*, *Phyllostegia bracteata*, *Pleomele fernaldii*, *Santalum haleakalae* var. *lanaiense*, and *Wikstroemia villosa*; and the tree snails *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*, which are listed as endangered in this final rule, are reported in this ecosystem on Molokai, Lanai, or Maui (HBMP 2008; TNC 2007).

#### Montane Wet

The montane wet ecosystem is composed of natural communities (grasslands, shrublands, forests, and bogs) found at elevations between 3,300 and 6,500 ft (1,000 and 2,000 m), in areas where annual precipitation is greater than 75 in (190 cm) (TNC 2006e). This system is found on all of the main Hawaiian Islands except Niihau and Kahoolawe, and only the islands of Molokai, Maui, and Hawaii have areas above 4,020 ft (1,225 m) (TNC 2006e). On the islands of Maui Nui this ecosystem is found on Molokai, Lanai, and Maui (TNC 2007). Native biological diversity is moderate to high (TNC 2006e). The plants *Bidens campylotheca* ssp. *pentamera*, *B. campylotheca* ssp. *waihoiensis*, *B. conjuncta*, *Calamagrostis hillebrandii*, *Cyanea duvalliorum*, *C. horrida*, *C. kunthiana*, *C. maritae*, *C. profuga*, *C. solanacea*, *Cyrtandra ferripilosa*, *C. oxybapha*, *Geranium hanaense*, *G. hillebrandii*, *Myrsine vaccinioides*, *Peperomia subpetiolata*, *Phyllostegia bracteata*, *P. pilosa*, *Santalum haleakalae* var. *lanaiense*, *Schiedea jacobii*, *S. laui*, and *Wikstroemia villosa*; and the tree snails *Partulina semicarinata* and *P. variabilis*, which are listed as endangered in this final rule, are reported in this ecosystem on the islands of Molokai, Lanai, or Maui (HBMP 2008; TNC 2007).

#### Montane Mesic

The montane mesic ecosystem is composed of natural communities (forests and shrublands) found at elevations between 3,300 and 6,500 ft (1,000 and 2,000 m), in areas where annual precipitation is between 50 and 75 in (130 and 190 cm), or are in otherwise mesic substrate conditions (TNC 2006f). This system is found on

Kauai, Molokai, Maui, and Hawaii Island (Gagne and Cuddihy 1999, pp. 97–99; TNC 2007). Native biological diversity is moderate, and this habitat is important for Hawaiian forest birds (Gagne and Cuddihy 1999, pp. 98–99; TNC 2006f). The plants *Bidens campylotheca* ssp. *pentamera*, *Cyanea horrida*, *C. kunthiana*, *C. magnicalyx*, *C. obtusa*, *C. solanacea*, *Cyrtandra ferripilosa*, *C. oxybapha*, *Geranium hillebrandii*, *Phyllostegia bracteata*, *Phyllostegia haliakalae*, *Santalum haleakalae* var. *lanaiense*, *Stenogyne kauauleensis*, and *Wikstroemia villosa*, which are listed as endangered in this final rule, are reported in this ecosystem on Molokai or Maui (TNC 2007; HBMP 2008; HNP 2012, in litt.).

#### Montane Dry

The montane dry ecosystem is composed of natural communities (shrublands, grasslands, forests) found at elevations between 3,300 and 6,500 ft (1,000 and 2,000 m), in areas where annual precipitation is less than 50 in (130 cm), or are in otherwise dry substrate conditions (TNC 2006g). This system is found on the islands of Maui and Hawaii (Gagne and Cuddihy 1999, pp. 93–97). The only plant species listed as endangered in this final rule that is found in this ecosystem is *Santalum haleakalae* var. *lanaiense* (TNC 2007; HBMP 2008).

#### Subalpine

The subalpine ecosystem is composed of natural communities (shrublands, grasslands, forests) found at elevations between 6,500 ft and 9,800 ft (2,000 and 3,000 m), in areas where annual precipitation is seasonal, between 15 and 40 in (38 and 100 cm), or are in otherwise dry substrate conditions (TNC 2006h). Fog drip is an important moisture supplement (Gagne and Cuddihy 1999, pp. 107–110). This system is found on the islands of Maui and Hawaii (Gagne and Cuddihy 1999, pp. 107–110). Native biological diversity is not high, but specialized invertebrates and plants (*Sophora chrysophylla* (mamane), *Myopora sandwicense* (naio), and *Deschampsia nubigena* (hairgrass)) are reported in this ecosystem (TNC 2006h). The plant *Phyllostegia bracteata*, which is listed as endangered in this final rule, is reported in this ecosystem (TNC 2007; HBMP 2008).

#### Alpine

The alpine ecosystem is composed of natural communities (shrublands, alpine lake, aeolian (wind-shaped) desert) found at elevations above 9,800 ft (3000 m), in areas where annual

precipitation is infrequent, with frost and snow, and intense solar radiation (TNC 2006i). Fog drip is an important moisture supplement (Gagne and Cuddihy 1999, pp. 107–110). This system is found on the islands of Maui and Hawaii (Gagne and Cuddihy 1999, pp. 107–110). Native biological diversity is not high, but highly specialized plants, such as the threatened *Argyroxiphium sandwicense* ssp. *macrocephalum* (ahinahina), occur in this ecosystem on Maui (TNC 2006i). None of the species being listed as endangered in this final rule are reported from this ecosystem (TNC 2007; HBMP 2008).

#### Dry Cliff

The dry cliff ecosystem is composed of vegetation communities occupying steep slopes (greater than 65 degrees) in areas that receive less than 75 in (190 cm) of rainfall annually, or are in otherwise dry substrate conditions (TNC 2006j). This ecosystem is found on all of the main Hawaiian Islands except Niihau, and is best represented along the leeward slopes of Lanai and Maui (TNC 2006j). A variety of shrublands occur within this ecosystem (TNC 2006j). Native biological diversity is low to moderate (TNC 2006j). The plants *Bidens campylothea* ssp. *pentamera*, *Phyllostegia haliakalae*, and *Pleomele fernaldii*, which are listed as endangered in this final rule, are reported in this ecosystem on Lanai or Maui (HBMP 2008; TNC 2007). In addition, *Cyanea mauiensis*, also listed as endangered in this final rule, may have occurred in this ecosystem on Maui, but this species has not been observed for over 100 years. The species-specific habitat needs of *Cyanea mauiensis* are not known.

#### Wet Cliff

The wet cliff ecosystem is generally composed of shrublands on near-vertical slopes (greater than 65 degrees) in areas that receive more than 75 in (190 cm) of annual precipitation, or in otherwise wet substrate conditions (TNC 2006k). This system is found on the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. On the islands of Maui Nui, this system is typically found along the windward sides of Molokai, Lanai, and Maui (TNC 2006k). Native biological diversity is low to moderate (TNC 2006k). The plants *Bidens campylothea* ssp. *pentamera*, *B. campylothea* ssp. *waihoiensis*, *B. conjuncta*, *Cyanea grimesiana* ssp. *grimesiana*, *C. horrida*, *C. magnicalyx*, *C. munroi*, *Cyrtandra filipes*, *Phyllostegia bracteata*, *P. haliakalae*, *Pleomele fernaldii*, and *Santalum haleakalae* var.

*lanaiense*, and the tree snails *Partulina semicarinata* and *P. variabilis*, which are listed as endangered in this final rule, are reported in this ecosystem on the islands of Molokai, Lanai, or Maui (HBMP 2008; TNC 2007).

#### Description of the 40 Maui Nui Species

Below is a brief description of each of the 40 Maui Nui species, presented in alphabetical order by genus. Plants are presented first, followed by animals.

##### Plants

In order to avoid confusion regarding the number of locations of each species (a location does not necessarily represent a viable population, as in some cases there may only be one or a very few representatives of the species present), we use the word “occurrence” instead of “population.” Each occurrence is composed only of wild (i.e., not propagated and outplanted) individuals.

*Bidens campylothea* ssp. *pentamera* (kookoolau), a perennial herb in the sunflower family (Asteraceae), occurs only on the island of Maui (Ganders and Nagata 1999, pp. 271, 273). Historically, *B. campylothea* ssp. *pentamera* was found on Maui’s eastern volcano (Haleakala). Currently, this subspecies is found on east Maui in the montane mesic, montane wet, dry cliff, and wet cliff ecosystems of Waikamoi Preserve and Kipahulu Valley (in Haleakala National Park) (TNC 2007; HBMP 2008; Welton 2008, in litt.; National Tropical Botanical Garden (NTBGa) 2009, pp. 1–2; Fay 2010, in litt.). It is uncertain if plants observed in the Hana Forest Reserve at Waihoi Valley are *B. campylothea* ssp. *pentamera* (Osterneck 2010, in litt.; Haleakala National Park (HNP) 2012, in litt.). On west Maui, *B. campylothea* ssp. *pentamera* is found on and near cliff walls in the lowland dry and lowland mesic ecosystems of Papalaua Gulch (West Maui Forest Reserve) and Kauaula Valley (NTBG 2009a, pp. 1–2; Perlman 2009a, in litt.). The 6 occurrences on east and west Maui total approximately 200 individuals.

*Bidens campylothea* ssp. *waihoiensis* (kookoolau), a perennial herb in the sunflower family (Asteraceae), occurs only on the island of Maui (Ganders and Nagata 1999, pp. 271, 273). Historically, *B. campylothea* ssp. *waihoiensis* was found on Maui’s eastern volcano in Waihoi Valley and Kaumakani ridge (HBMP 2008). Currently, this subspecies is found in the lowland wet, montane wet, and wet cliff ecosystems in Kipahulu Valley (Haleakala National Park) and possibly in Waihoi Valley (Hana Forest Reserve) on east Maui

(TNC 2007; HBMP 2008; Welton 2008, in litt.). Approximately 200 plants are scattered over an area of about 2.5 miles (4 km) in Kipahulu Valley (Welton 2010a, in litt.). In 1974, hundreds of individuals were observed in Waihoi Valley along Waiohonu stream (NTBG 2009b, p. 4).

*Bidens conjuncta* (kookoolau), a perennial herb in the sunflower family (Asteraceae), occurs only on the island of Maui (Ganders and Nagata 1999, pp. 273–274). Historically, this species was known only from the mountains of west Maui in the Honokohau drainage basin (Sherff 1923, p. 162). Currently, *B. conjuncta* is found scattered throughout the upper elevation drainages of the west Maui mountains in the lowland wet, montane wet, and wet cliff ecosystems, in 9 occurrences totaling an estimated 7,000 individuals (TNC 2007; HBMP 2008; Oppenheimer 2008a, in litt.; Perlman 2010, in litt.).

*Calamagrostis hillebrandii* (NCN), a perennial in the grass family (Poaceae), occurs only on the island of Maui (O’Connor 1999, p. 1,509). Historically, this species was known from Puu Kukui in the west Maui mountains (Wagner et al. 2005a—*Flora of the Hawaiian Islands database*). Currently, this species is found in bogs in the montane wet ecosystem in the west Maui mountains, from Honokohau to Kahoolewa ridge, including East Bog and Eke Crater, in three occurrences totaling a few hundred individuals (TNC 2007; HBMP 2008; Oppenheimer 2010a, in litt.).

*Canavalia pubescens* (awikiwiki), a perennial climber in the pea family (Fabaceae), is currently found only on the island of Maui, although it was also historically known from Niihau, Kauai, and Lanai (Wagner and Herbst 1999, p. 654). On Niihau, this species was known from one population in Haa Valley that was last observed in 1949 (HBMP 2008). On Kauai, this species was known from six populations ranging from Awaawapuhi to Wainiha, where it was last observed in 1977 (HBMP 2008). On Lanai, this species was known from Kaena Point to Huawai Bay. Eight individuals were reported in the coastal ecosystem west of Hulupoe, but they have not been seen since 1998 (Oppenheimer 2007a, in litt.; HBMP 2008). At present, the only known occurrence is on east Maui, from Puu o Kali south to Pohakea, in the lowland dry ecosystem (Starr 2006, in litt.; Altenburg 2007, pp. 12–13; Oppenheimer 2006a, in litt.; 2007a, in litt.; Greenlee 2013, in litt.). All plants of this species that formerly were found in the Ahihi-Kinau Natural Area Reserve on Maui were destroyed by feral goats (*Capra hircus*) by the end of 2010

(Fell-McDonald 2010, in litt.). In addition, although approximately 20 individuals of *Canavalia pubescens* were reported from the Palauea-Keahou area as recently as 2010 (Altenberg 2010, in litt.), no individuals have been found in site visits to this area over the last 2 years (Greenlee 2013, in litt.). Greenlee (2013, in litt.) reports that these plants may have succumbed to prolonged drought. In April of 2010, *C. pubescens* totaled as many as 500 individuals; however, with the loss of the plants at Ahihi-Kinaiu Natural Area Reserve and the loss of plants at Palauea-Keahou, *C. pubescens* may currently total fewer than 200 individuals at a single location.

*Cyanea asplenifolia* (haha), a shrub in the bellflower family (Campanulaceae), is found only on the island of Maui. This species was known historically from Waihee Valley and Kaanapali on west Maui, and Halehaku ridge on east Maui (Lammers 1999, p. 445; HBMP 2008). On west Maui, in the lowland wet ecosystem, there are 3 occurrences totaling 14 individuals in the Puu Kukui Preserve and two occurrences totaling 5 individuals in the West Maui Natural Area Reserve. On east Maui, *C. asplenifolia* is found in 1 occurrence each in the lowland mesic ecosystem in Haleakala National Park (53 individuals) and Kipahulu Forest Reserve (FR) (140 individuals), and 1 occurrence in the lowland wet ecosystem in the Makawao FR (5 individuals) (TNC 2007; HBMP 2008; Oppenheimer 2008b, in litt., 2010b, in litt.; PEPP 2008, p. 48; Welton and Haus 2008, p. 12; NTBG 2009c, pp. 3–5; Welton 2010a, in litt.). Currently, *C. asplenifolia* is known from 8 occurrences totaling fewer than 200 individuals. The occurrence at Haleakala National Park is protected by a temporary exclosure (HNP 2012, in litt.).

*Cyanea duvalliorum* (haha), a tree in the bellflower family (Campanulaceae), is found only in the east Maui mountains (Lammers 2004, p. 89). This species was described in 2004, after the discovery of individuals of a previously unknown species of *Cyanea* at Waiohiwi Gulch (Lammers 2004, p. 91). Studies of earlier collections of sterile material extend the historical range of this species on the windward slopes of Haleakala in the lowland wet and montane wet ecosystems, east of Waiohiwi Stream, from Honomanu Stream to Wailua Iki Streams, and to Kipahulu Valley (Lammers 2004, p. 89). In 2007, one individual was observed in the lowland wet ecosystem of the Makawao FR (NTBG 2009d, p. 2). In 2008, 71 individuals were found in 2 new locations in the Makawao FR, along

with many juveniles and seedlings (NTBG 2009d, p. 2). Currently there are 2 occurrences with an approximate total of 71 individuals in the montane wet ecosystem near Makawao FR, with an additional 135 individuals outplanted in Waikamoi Preserve (TNC 2007; NTBG 2009d, p. 2; Oppenheimer 2010a, in litt.).

*Cyanea grimesiana* ssp. *grimesiana* (haha), a shrub in the bellflower family (Campanulaceae), is known only from Oahu and Molokai (Lammers 2004 p. 84; Lammers 1999, pp. 449, 451; 68 FR 35950, June 17, 2003). On Molokai, this species was last observed in 1991 in the wet cliff ecosystem at Wailau Valley (PEPP 2010, p. 45). Currently, on Oahu there are five to six individuals in four occurrences in the Waianae and Koolau Mountains (U.S. Army 2006; HBMP 2008).

*Cyanea horrida* (haha nui), a member of the bellflower family (Campanulaceae), is a palm-like tree found only on the island of Maui. This species was known historically from the slopes of Haleakala (Lammers 1999, p. 453; HBMP 2008). Currently, *C. horrida* is known from 12 occurrences totaling 44 individuals in the montane mesic, montane wet, and wet cliff ecosystems in Waikamoi Preserve, Hanawai Natural Area Reserve, and Haleakala National Park on east Maui (TNC 2007; HBMP 2008; PEPP 2009, p. 52; PEPP 2010, pp. 46–47; Oppenheimer 2010c, in litt.; TNCH 2010a, p. 1).

*Cyanea kunthiana* (haha), a shrub in the bellflower family (Campanulaceae), is found only on Maui, and was historically known from both the east and west Maui mountains (Lammers 1999, p. 453; HBMP 2008). *Cyanea kunthiana* was known to occur in the montane mesic ecosystem in the east Maui mountains in upper Kipahulu Valley, in Haleakala National Park and Kipahulu FR (HBMP 2008). Currently, in the east Maui mountains, *C. kunthiana* occurs in the lowland wet and montane wet ecosystems in Waikamoi Preserve, Hanawi Natural Area Reserve, East Bog, Kaapahu, and Kipahulu Valley. In the west Maui mountains, *C. kunthiana* occurs in the lowland wet and montane wet ecosystems at Eke Crater, Kahoolewa ridge, and at the junction of the Honokowai, Hahaione, and Honokohau gulches (TNC 2007; HBMP 2008; NTBG 2009e, pp. 1–3; Perlman 2010, in litt.; Oppenheimer 2010a, in litt.). The 15 occurrences total 165 individuals, although botanists speculate that this species may total as many as 400 individuals with further surveys of potential habitat on east and west Maui (TNC 2007; HBMP 2008; Fay 2010, in

litt.; Oppenheimer 2010a, in litt.; Osternak 2010, in litt.).

*Cyanea magnicalyx* (haha), a perennial shrub in the bellflower family (Campanulaceae), is known from west Maui (Lammers 1999, pp. 449, 451; Lammers 2004, p. 84). Currently, there are seven individuals in three occurrences on west Maui: two individuals in Kaluanui, a subgulch of Honokohau Valley, in the lowland wet ecosystem; four individuals in Iao Valley in the wet cliff ecosystem; and one individual in a small drainage south of the Kauaula rim, in the montane mesic ecosystem (Lammers 2004, p. 87; Perlman 2009b in litt.; Wood 2009, in litt.).

*Cyanea maritae* (haha), a shrub in the bellflower family (Campanulaceae), is found only on Maui (Lammers 2004, p. 92). Sterile specimens were collected from the northwestern slopes of Haleakala in the Waiohiwi watershed and east to Kipahulu in the early 1900s. Between 2000 and 2002, fewer than 20 individuals were found in the Waiohiwi area (Lammers 2004, pp. 92, 93). Currently, there are 4 occurrences, totaling between 23 to 50 individuals in Kipahulu, Kaapahu, west Kahakapao, and in the Koolau FR in the lowland wet and montane wet ecosystems on east Maui (TNC 2007; Oppenheimer 2010b, in litt.; Welton 2010b, in litt.).

*Cyanea mauiensis* (haha), a perennial shrub in the bellflower family (Campanulaceae), was last observed on Maui about 100 years ago (Lammers 2004, pp. 84–85; TNC 2007). Although there are no documented occurrences of this species known today, botanists believe this species may still be extant as all potentially suitable lowland mesic and dry cliff habitat has not been surveyed.

*Cyanea munroi* (haha), a short-lived shrub in the bellflower family (Campanulaceae), is known from Molokai and Lanai (Lammers 1999, pp. 449, 451; Lammers 2004, pp. 84–87). Currently, there are no known individuals on Molokai (last observed in 2001), and only two individuals on Lanai at a single location, in the wet cliff ecosystem (TNC 2007; HBMP 2008; Perlman 2008a, in litt.; Wood 2009a, in litt.; Oppenheimer 2010d, in litt.).

*Cyanea obtusa* (haha), a shrub in the bellflower family (Campanulaceae), is found only on Maui (Lammers 1999, p. 458). Historically, this species was found in both the east and west Maui mountains (Hillebrand 1888, p. 254; HBMP 2008). Not reported since 1919 (Lammers 1999, p. 458), *C. obtusa* was rediscovered in the early 1980s at one site each on east and west Maui. However, by 1989, plants in both

locations had disappeared (Hobdy *et al.* 1991, p. 3; Medeiros 1996, in litt.). In 1997, 4 individuals were observed in Manawainui Gulch in Kahikinui, and another occurrence of 5 to 10 individuals was found in Kahakapao Gulch, both in the montane mesic ecosystem on east Maui (Wood and Perlman 1997, p. 11; Lau 2001, in litt.). However, the individuals found at Kahakapao Gulch are now considered to be *Cyanea elliptica* or hybrids between *C. obtusa* and *C. elliptica* (PEPP 2007, p. 40). In 2001, several individuals were seen in Hanaula and Pohakea gulches on west Maui; however, only hybrids are currently known in this area (NTBG 2009f, p. 3). It is unknown if individuals of *C. obtusa* remain at Kahikinui, as access to the area to ascertain the status of these plants is difficult and has not been attempted since 2001 (PEPP 2008, p. 55; PEPP 2009, p. 58). Two individuals were observed on a cliff along Wailaulau Stream in the montane mesic ecosystem on east Maui in 2009 (Duvall 2010, in litt.). Currently, this species is known from one occurrence of only a few individuals in the montane mesic ecosystem on east Maui. Historically, this species also occurred in the lowland dry ecosystem at Manawainui on west Maui and at Ulupalakua on east Maui (HBMP 2008).

*Cyanea profuga* (haha), a shrub in the bellflower family (Campanulaceae), occurs only on Molokai (Lammers 1999, pp. 461–462; Wood and Perlman 2002, p. 4). Historically, this species was found in Mapulehu Valley and along Pelekunu Trail, and has not been seen in those locations since the early 1900s (Wood and Perlman 2002, p. 4). In 2002, six individuals were discovered along a stream in Wawaia Gulch (Wood and Perlman 2002, p. 4). In 2007, seven individuals were known from Wawaia Gulch, and an additional six individuals were found in Kumueli (Wood 2005, p. 17; USFWS 2007a; PEPP 2010, p. 55). In 2009, only four individuals remained at Wawaia Gulch; however, nine were found in Kumueli Gulch (Bakutis 2010, in litt.; Oppenheimer 2010e, in litt.; Perlman 2010, in litt.; PEPP 2010, p. 55). Currently, there are 4 occurrences totaling up to 34 individuals in the lowland mesic and montane wet ecosystems on Molokai (TNC 2007; Bakutis 2010, in litt.; Perlman 2010, in litt.).

*Cyanea solanacea* (popolo, haha nui), a shrub in the bellflower family (Campanulaceae), is found only on Molokai. According to Lammers (1999, p. 464) and Wagner (*et al.* 2005a—*Flora of the Hawaiian Islands database*) the range of *C. solanacea* includes Molokai and may also include west Maui. In his

treatment of the species of the Hawaiian endemic genus *Cyanea*, Lammers (1999, p. 464) included a few sterile specimens of *Cyanea* from Puu Kukui, west Maui and the type specimen (now destroyed) for *C. scabra* var. *sinuata* from west Maui in *C. solanacea*. However, Oppenheimer recently reported (Oppenheimer 2010a, in litt.) that the plants on west Maui were misidentified as *C. solanacea* and are actually *C. macrostegia*. Based on Oppenheimer's recent field observations, the range of *C. solanacea* is limited to Molokai. Historically, *Cyanea solanacea* ranged from central Molokai at Kalae, eastward to Pukoo in the lowland mesic, lowland wet, and montane mesic ecosystems (HBMP 2008). Currently, there are four small occurrences at Hanalilolilo, near Pepeopae Bog, Kaunakakai Gulch, and Kawela Gulch, in the montane wet ecosystem. These occurrences total 26 individuals (Bakutis 2010, in litt.; Oppenheimer 2010a, in litt.; TNCH 2011, pp. 21, 57).

*Cyrtandra ferripilosa* (haiwale), a shrub in the African violet family (Gesneriaceae), occurs only on Maui (St. John 1987, pp. 497–498; Wagner and Herbst 2003, p. 29). This species was discovered in 1980 in the east Maui mountains at Kuiki in Kipahulu Valley (St. John 1987, pp. 497–498; Wagner *et al.* 2005a—*Flora of the Hawaiian Islands database*). Currently, there are a few individuals each in two occurrences at Kuiki and on the Manawainui plane in the montane mesic and montane wet ecosystems (Oppenheimer 2010f, in litt.; Welton 2010a, in litt.).

*Cyrtandra filipes* (haiwale), a shrub in the African violet family (Gesneriaceae), is found on Maui (Wagner *et al.* 1999d, pp. 753–754; Oppenheimer 2006b, in litt.). According to Wagner *et al.* (1999d, p. 754), the range of *C. filipes* includes Maui and Molokai. Historical collections from Kapunakea (1800) and Olowalu (1971) on Maui indicate it once had a wider range on this island. In 2004, it was believed there were over 2,000 plants at Honokohau and Waihee in the west Maui mountains; however, recent studies have shown that these plants do not match the description for *C. filipes* (Oppenheimer 2006b, in litt.). Currently, there are between 134 and 155 individuals in 4 occurrences in the lowland wet and wet cliff ecosystems at Kapalaoa, Honokowai, Honolua, and Waihee Valley on west Maui, and approximately 7 individuals at Mapulehu in the lowland mesic ecosystem on Molokai, with an historical occurrence in the lowland wet ecosystem (Oppenheimer 2010c, in litt.).

*Cyrtandra oxybapha* (haiwale), a shrub in the African violet family

(Gesneriaceae), is found on Maui (Wagner *et al.* 1999d, p. 771). This species was discovered in the upper Pohakea Gulch in Hanaula in the west Maui mountains in 1986 (Wagner *et al.* 1989, p. 100; TNC 2007). Currently, there are 2 known occurrences with a total of 137 to 250 individuals.

*Cyrtandra oxybapha* occurs in the montane wet ecosystem on west Maui, from Hanaula to Pohakea Gulch. This occurrence totals between 87 and 97 known individuals, with perhaps as many as 150 or more (Oppenheimer 2008c, in litt.). The current status of the 50 to 100 individuals in the montane mesic ecosystem in Manawainui Gulch on east Maui is unknown, as these plants have not been surveyed since 1997 (Oppenheimer 2010a, in litt.).

*Festuca molokaiensis* (NCN), a member of the grass family (Poaceae), is found on Molokai (Catalan *et al.* 2009, p. 54). This species is only known from the type locality at Kupaia Gulch, in the lowland mesic ecosystem (Catalan *et al.* 2009, p. 55). Last seen in 2009, the current number of individuals is unknown; however, field surveys for *F. molokaiensis* at Kupaia Gulch are planned for 2011 (Oppenheimer 2010g, in litt.). Oppenheimer (2011, pers. comm.) suggests that the drought over the past couple of years on Molokai may have suppressed the growth of *F. molokaiensis* and prevented its observation by botanists in the field. He also suggested that this species may be an annual whose growth will be stimulated by normal rainfall patterns.

*Geranium hanaense* (nohoanu), a shrub in the geranium family (Geraniaceae), is found on Maui (Wagner *et al.* 1999e, pp. 730–732). This species was first collected in 1973, from two adjacent montane bogs on the northeast rift of Haleakala, east Maui (Medeiros and St. John 1988, pp. 214–220). At that time, there were an estimated 500 to 700 individuals (Medeiros and St. John 1988, pp. 214–220). Currently, *G. hanaense* occurs in “Big Bog” and “Mid Camp Bog” in the montane wet ecosystem on the northeast rift of Haleakala, with the same number of estimated individuals (Welton 2008, in litt.; Welton 2010a, in litt.; Welton 2010b, in litt.).

*Geranium hillebrandii* (nohoanu), a shrub in the geranium family (Geraniaceae), is found on Maui (Aedo and Munoz Garmendia 1997, p. 725; Wagner *et al.* 1999e, pp. 732–733; Wagner and Herbst 2003, p. 28). Little is known of the historical locations of *G. hillebrandii*, other than the type collection made in the 1800s at Eke Crater, in the west Maui mountains (Hillebrand 1888, p. 56). Currently, 4

occurrences total over 10,000 individuals, with the largest 2 occurrences in the west Maui bogs, from Puu Kukui to East Bog and Kahoolewa ridge. A third occurrence is at Eke Crater and the surrounding area, and the fourth occurrence is at Lihau (HBMP 2008; Oppenheimer 2010h, in litt.). These occurrences are found in the montane wet and montane mesic ecosystems on west Maui (TNC 2007).

*Mucuna sloanei* var. *persericea* (sea bean), a vine in the pea family (Fabaceae), is found on Maui (Wilmot-Dear 1990, pp. 27–29; Wagner *et al.* 2005a—*Flora of the Hawaiian Islands database*). In her revision of *Mucuna* in the Pacific Islands, Wilmot-Dear recognized this variety from Maui based on leaf indumentum (covering of fine hairs or bristles) (Wilmot-Dear 1990, p. 29). At the time of Wilmot-Dear's publication, *M. sloanei* var. *persericea* ranged from Makawao to Wailua Iki, on the windward slopes of the east Maui mountains (Wagner *et al.* 2005a—*Flora of the Hawaiian Islands database*). Currently, there are possibly a few hundred individuals in five occurrences: Ulalena Hill, north of Kawaipapa Gulch, lower Nahiku, Koki Beach, and Piinau Road, all in the lowland wet ecosystem on east Maui (Duvall 2010, in litt.; Hobdy 2010, in litt.).

*Myrsine vaccinioides* (kolea), a shrub in the myrsine family (Myrsinaceae), is found on Maui (Wagner *et al.* 1999f, p. 946; HBMP 2008). This species was historically known from shrubby bogs near Violet Lake on west Maui (Wagner *et al.* 1999f, p. 946). In 2005, three occurrences of a few hundred individuals were reported at Eke, Puu Kukui and near Violet Lake (Oppenheimer 2006c, in litt.). Currently, there are estimated to be several hundred, but fewer than 1,000, individuals scattered in the summit area of the west Maui mountains at Eke Crater, Puu Kukui, Honokowai-Honolua, and Kahoolewa, in the montane wet ecosystem (Oppenheimer 2010i, in litt.).

*Peperomia subpetiolata* (alaala wai nui), a perennial herb in the pepper family (Piperaceae), is found on Maui (Wagner *et al.* 1999g, p. 1035; HBMP 2008). Historically, *P. subpetiolata* was known only from the lower Waikamoi (Kula pipeline) area on the windward side of Haleakala on east Maui (Wagner *et al.* 1999g, p. 1,035; HBMP 2008). In 2001, it was estimated that 40 individuals occurred just west of the Makawao-Koolau FR boundary, in the montane wet ecosystem. *Peperomia cookiana* and *P. hirtipetiola* also occur in this area, and are known to hybridize with *P. subpetiolata* (NTBG 2009g, p. 2;

Oppenheimer 2010j, in litt.). In 2007, 20 to 30 hybrid plants were observed at Maile Trail, and at three areas near the Waikamoi Flume road (NTBG 2009g, p. 2). Based on the 2007 and 2010 surveys, all known plants are now considered to be hybrids mostly between *P. subpetiolata* and *P. cookiana*, with a smaller number of hybrids between *P. subpetiolata* and *P. hirtipetiola* (NTBG 2009g, p. 2; Lau 2011, in litt.). *Peperomia subpetiolata* is recognized as a valid species, and botanists continue to search for plants in its previously known locations as well as in new locations with potentially suitable habitat (NTBG 2009g, p. 2; PEPP 2010, p. 96; Lau 2011, pers. comm.).

*Phyllostegia bracteata* (NCN), a perennial herb in the mint family (Lamiaceae), is found on Maui (Wagner *et al.* 1999h, pp. 814–815). Historically, this species was known from the east Maui mountains at Ukulele, Puu Nianiau, Waikamoi Gulch, Koolau Gap, Kipahulu, Nahiku-Kuhiwa trail, Waihoi Valley, and Manawainui; and from the west Maui mountains at Puu Kukui and Hanakao (HBMP 2008). This species appears to be short-lived, ephemeral, and disturbance-dependent, in the lowland wet, montane mesic, montane wet, subalpine, and wet cliff ecosystems (NTBG 2009h, p. 1). There have been several reported sightings of *P. bracteata* between 1981 and 2001, at Waihoi Crater Bog, Waikamoi Preserve, Waikamoi flume, and Kipahulu on east Maui, and at Pohakea Gulch on west Maui; however, none of these individuals were extant as of 2009 (PEPP 2009, pp. 89–90). In 2009, one individual was found at Kipahulu, near Delta Camp, on east Maui, but was not relocated on a follow-up survey during that same year (NTBG 2009h, p. 3). Botanists continue to search for *P. bracteata* in previously reported locations, as well as in other areas with potentially suitable habitat (NTBG 2009h, p. 3; PEPP 2009, pp. 89–90).

*Phyllostegia haliakalae* (NCN), a vine in the mint family (Lamiaceae), is known from Molokai, Lanai, and east Maui (Wagner 1999, p. 269). The type specimen was collected by Wawra in 1869 or 1870, in a dry ravine at the foot of Haleakala. An individual was found in flower on the eastern slope of Haleakala, in the wet cliff ecosystem, in 2009; however, this plant has died (TNC 2007; Oppenheimer 2010b, in litt.). Collections were made before the plant died, and propagules outplanted in the Puu Mahoe Arboretum (three plants) and Olinda Rare Plant Facility (four plants) (Oppenheimer 2011b, in litt.). In addition, this species has been outplanted in the lowland wet, montane

wet, and montane mesic ecosystems of Haleakala National Park (HNP 2012, in litt.). Botanists continue to search in areas with potentially suitable habitat for wild individuals of this plant (Oppenheimer 2010b, in litt.). *Phyllostegia haliakalae* was last reported from the lowland mesic ecosystem on Molokai in 1928, and from the dry cliff and wet cliff ecosystems on Lanai in the early 1900s (TNC 2007; HBMP 2008). Currently no individuals are known in the wild on Maui, Molokai, or Lanai; however, over 100 individuals have been outplanted (HNP 2012, in litt.).

*Phyllostegia pilosa* (NCN), a vine in the mint family (Lamiaceae), is known from east Maui (Wagner 1999, p. 274). There are two occurrences totaling seven individuals west of Puu o Kakaie on east Maui, in the montane wet ecosystem (TNC 2007; HBMP 2008). The individuals identified as *P. pilosa* on Molokai, at Kamoku Flats (montane wet ecosystem) and at Mooloa (lowland mesic ecosystem), have not been observed since the early 1900s (TNC 2007; HBMP 2008).

*Pittosporum halophilum* (hoawa), a shrub or small tree in the pittosporum family (Pittosporaceae), is found on Molokai (Wood 2005, pp. 2, 41). This species was reported from Huelo islet, Mokapu Island, Okala Island, and Kukaiwaa peninsula. On Huelo islet, there were two individuals in 1994, and in 2001, only one individual remained (Wood *et al.* 2001, p. 12; Wood *et al.* 2002, pp. 18–19). The current status of this species on Huelo islet is unknown. On Mokapu Island, there were 15 individuals in the coastal ecosystem in 2001, and in 2005, 10 individuals remained. On Okala Island, there were two individuals in 2005, and one individual on the sea cliff at Kukaiwaa peninsula (Wainene) (Wood 2005, pp. 2, 41). As of 2010, there were three occurrences totaling five individuals: Three individuals on Mokapu Island, one individual on Okala Island, and one individual on Kukaiwaa peninsula (Bakutis 2010, in litt.; Hobdy 2010, in litt.; Perlman 2010, in litt.). At least 17 individuals have been outplanted at 3 sites on the coastline of the nearby Kalaupapa peninsula (Garnett 2010a, in litt.).

*Pleomele fernaldii* (hala pepe), a tree in the asparagus family (Asparagaceae), is found only on the island of Lanai (Wagner *et al.* 1999i, p. 1,352; Wagner and Herbst 2003, p. 67). Historically known throughout Lanai, this species is currently found in the lowland dry, lowland mesic, lowland wet, dry cliff, and wet cliff ecosystems, from Hulopaa and Kanoa gulches southeast to

Waiakeakua and Puhielelu (St. John 1947, pp. 39–42 cited in St. John 1985, pp. 171, 177–179; HBMP 2006; HBMP 2008; PEPP 2008, p. 75; Oppenheimer 2010d, in litt.). Currently, there are several hundred to perhaps as many as 1,000 individuals. The number of individuals has decreased by about one-half in the past 10 years (there were more than 2,000 individuals in 1999), with very little recruitment observed recently (Oppenheimer 2008d, in litt.).

*Santalum haleakalae* var. *lanaiense* (iliahi, Lanai sandalwood) is a tree in the sandalwood family (Santalaceae). Currently, *S. haleakalae* var. *lanaiense* is known from Molokai, Lanai, and Maui, in 26 occurrences totaling fewer than 100 individuals (Wagner *et al.* 1999c, pp. 1,221–1,222; HBMP 2008; Harbaugh *et al.* 2010, pp. 834–835). On Molokai, there are more than 12 individuals in 4 occurrences from Kikiakala to Kamoku Flats and Puu Kokekole, with the largest concentration at Kumueli Gulch, in the montane mesic and lowland mesic ecosystems (Harbaugh *et al.* 2010, pp. 834–835). On Lanai, there are approximately 10 occurrences totaling 30 to 40 individuals: Kanepuu, in the lowland mesic ecosystem (5 individuals); the headwaters of Waiopae Gulch in the lowland wet ecosystem (3 individuals); the windward side of Hauola on the upper side of Waiopae Gulch in the lowland mesic ecosystem (1 individual); the drainage to the north of Puhielelu Ridge and enclosure, in the headwaters of Lopa Gulch in the lowland mesic ecosystem (3 individuals); 6 occurrences near Lanaihale in the montane wet ecosystem (21 individuals); and the mountains east of Lanai City in the lowland wet ecosystem (a few individuals) (HBMP 2008; Harbaugh *et al.* 2010, pp. 834–835; HBMP 2010; Wood 2010a, in litt.). On west Maui, there are eight single-individual occurrences: Hanaulaiki Gulch in the lowland dry ecosystem; Kauaula and Puehuehunui Gulches in the lowland mesic, montane mesic, and wet cliff ecosystems; Kahanahaiki Gulch and Honokowai Gulch in the lowland wet ecosystem; Wakihuli in the wet cliff ecosystem; and Manawainui Gulch in the montane mesic and lowland dry ecosystems (HBMP 2008; Harbaugh *et al.* 2010, pp. 834–835; Wood 2010a, in litt.). On east Maui, there are 4 occurrences (10 individuals) in Auwahi, in the montane mesic, montane dry, and lowland dry ecosystems (TNC 2007; HBMP 2008; Harbaugh *et al.* 2010, pp. 834–835).

*Schiedea jacobii* (NCN), a perennial herb or subshrub in the pink family (Caryophyllaceae), occurs only on Maui

(Wagner *et al.* 1999j, p. 284). Discovered in 1992, the single occurrence consisted of nine individuals along wet cliffs between Hanawi Stream and Kuhiwa drainage (in Hanawi Natural Area Reserve), in the montane wet ecosystem on east Maui (Wagner *et al.* 1999j, p. 286). By 1995, only four plants could be relocated in this location. It appeared that the other five known individuals had been destroyed by a landslide (Wagner *et al.* 1999j, p. 286). In 2004, one seedling was observed in the same location, and in 2010, no individuals were relocated (Perlman 2010, in litt.). The State of Hawaii plans to outplant propagated individuals in a fenced area in Hanawi Natural Area Reserve in 2011 (Oppenheimer 2010a, in litt.; Perlman 2010, in litt.).

*Schiedea laui* (NCN), a perennial herb or subshrub in the pink family (Caryophyllaceae), is found only on Molokai (Wagner *et al.* 2005b, pp. 90–92). In 1998, when this species was first observed, there were 19 individuals located in a cave along a narrow stream corridor at the base of a waterfall in the Kamakou Preserve, in the montane wet ecosystem (Wagner *et al.* 2005b, pp. 90–92). By 2000, only 9 individuals with a few immature plants and seedlings were relocated, and in 2006, 13 plants were seen (Wagner *et al.* 2005b, pp. 90–92; PEPP 2007, p. 57). Currently, there are 24 to 34 individuals in the same location in Kamakou Preserve (Bakutis 2010, in litt.).

*Schiedea salicaria* (NCN), a shrub in the pink family (Caryophyllaceae), occurs on Maui (Wagner *et al.* 1999j, pp. 519–520). It is historically known from a small area on west Maui, from Lahaina to Waikapu. Currently, this species is found in three occurrences: Kaunoahua gulch (500 to 1,000 individuals), Puu Hona (about 50 individuals), and Waikapu Stream (3 to 5 individuals), in the lowland dry ecosystem on west Maui (TNC 2007; Oppenheimer 2010k, in litt.; Oppenheimer 2010l, in litt.). Hybrids and hybrid swarms (hybrids between parent species, and subsequently formed progeny from crosses among hybrids and crosses of hybrids to parental species) between *S. salicaria* and *S. menziesii* are known on the western side of west Maui (Wagner *et al.* 2005b, p. 138). However, according to Weller (2012, in litt.) the hybridization process is natural when *S. salicaria* and *S. menziesii* co-occur and because of the dynamics in this hybrid zone, traits of *S. salicaria* prevail and replace those of *S. menziesii*. Weller (2012, in litt.) notes that populations of both species will likely remain distinct because the two species do not overlap throughout much of their range.

*Stenogyne kauaulaensis* (NCN), a vine in the mint family (Lamiaceae), occurs on Maui. This recently described (2008) plant is found only along the southeastern rim of Kauaula Valley, in the montane mesic ecosystem on west Maui (TNC 2007; Wood and Oppenheimer 2008, pp. 544–545). At the time *S. kauaulaensis* was described, the authors reported a total of 15 individuals in one occurrence. However, one of the authors reports that due to the clonal (genetic duplicate) growth habit of this species, botanists believe it is currently represented by only three genetically distinct individuals (Oppenheimer 2010k, in litt.).

*Wikstroemia villosa* (akia), a shrub or tree in the akia family (Thymelaeaceae), is found on Maui (Peterson 1999, pp. 1,290–1,291). Historically known from the lowland wet, montane wet, and montane mesic ecosystems on east and west Maui, this species is currently known from a recent discovery (2007) of one individual on the windward side of Haleakala (on east Maui), in the montane wet ecosystem (Peterson 1999, p. 1,291; TNC 2007; HBMP 2008). As of 2010, there was one individual and one seedling at the same location (Oppenheimer 2010m, in litt.). In addition, three individuals have been outplanted in Waikamoi Preserve (Oppenheimer 2010m, in litt.).

#### Animals

Newcomb's tree snail (*Newcombia cumingi*), a member of the family Achatinellidae and the endemic Hawaiian subfamily Achatinellinae (Newcomb 1853, p. 25), is known only from the island of Maui (Cowie *et al.* 1995, p. 62). All members of this species have sinistral (left-coiling), oblong, spindle-shaped shells of five to seven whorls that are coarsely sculptured (Cooke and Kondo 1960, pp. 9, 33). Newcomb's tree snail reaches an adult length of approximately 0.8 in (21 mm) and its shell is mottled in shades of brown that blend with the bark of its native host plant, *Metrosideros polymorpha* (ohia) (Pilsbry and Cooke 1912–1914, p. 10; Thacker and Hadfield 1998, p. 4). The exact life span and fecundity of Newcomb's tree snails is unknown, but they attain adult size within 4 to 5 years (Thacker and Hadfield 1998, p. 2). Newcomb's tree snail is believed to exhibit the low reproductive rate of other Hawaiian tree snails belonging to the same family (Thacker and Hadfield 1998, p. 2). It feeds on fungi and algae that grow on the leaves and trunks of its host plant (Pilsbry and Cooke 1912–1914, p. 103). Historically, this species was distributed

from the west Maui mountains (near Lahaina and Wailuku) to the slopes of Haleakala (Makawao) on east Maui (Pilsbry and Cooke 1912–1914, p. 10). In 1994, a small population of Newcomb's tree snail was found on a single ridge on the northeastern slope of the west Maui mountains, in the lowland wet ecosystem (Thacker and Hadfield 1998, p. 3; TNC 2007). Eighty-six snails were documented in the same location in 1998; in 2006, only nine individuals were located; and, in 2012, only one individual was located (Thacker and Hadfield 1998, p. 2; Hadfield 2007, p. 8; Higashino 2013, in litt.).

*Partulina semicarinata* (Lanai tree snail, pupu kani oe), a member of the family Achatinellidae and the endemic Hawaiian subfamily Achatinellinae, is known only from the island of Lanai (Pilsbry and Cooke 1912–1914, p. 86). The shell may coil to the right (dextral) or left (sinistral), but appears to be constant within a population. The oblong to ovate shells of the adult are 0.6 to 0.8 in (16 to 20 mm) long, have 5 to 7 whorls, and range in color from rusty brown to white, with some individuals having bands around the shells. The shell has a distinctive keel that runs along the last whorl, and is more distinctive in juveniles (Pilsbry and Cooke 1912–1914, pp. 86–88). Adults may attain an age exceeding 15 to 20 years, and reproductive output is low, with an adult snail giving birth to 4 to 6 live young per year (Hadfield and Miller 1989, pp. 10–12). *Partulina semicarinata* is arboreal and nocturnal, and grazes on fungi and algae growing on leaf surfaces (Pilsbry and Cooke 1912–1914, p. 103). This snail species is found on the following native host plants: *Metrosideros polymorpha*, *Broussaisia arguta* (kanawao), *Psychotria* spp. (kopiko), *Coprosma* spp. (pilo), *Melicope* spp. (alani), and dead *Cibotium glaucum* (tree fern, hapuu). Occasionally the snail is found on nonnative plants such as *Psidium guajava* (guava), *Cordyline australis* (New Zealand tea tree), and *Phormium tenax* (New Zealand flax) (Hadfield 1994, p. 2). Historically, *P. semicarinata* was found in wet and mesic *M. polymorpha* forests on Lanai. There are no historical population estimates for this snail, but qualitative accounts of Hawaiian tree snails indicates they were widespread and abundant, possibly numbering in the tens of thousands between the 1800s and early 1900s (Hadfield 1986, p. 69). In 1993, 105 individuals of *P. semicarinata* were found during surveys conducted in its historical range. Subsequent surveys in 1994, 2000, 2001, and 2005 documented

55, 12, 4, and 29 individuals, respectively, in the lowland wet, montane wet, and wet cliff ecosystems in central Lanai (Hadfield 2005, pp. 3–5; TNC 2007).

*Partulina variabilis* (Lanai tree snail, pupu kani oe), a member of the family Achatinellidae and the endemic Hawaiian subfamily Achatinellinae, is known only from the island of Lanai (Pilsbry and Cooke 1912–1914, p. 86). The shell may coil to the right (dextral) or left (sinistral), and both types can be found within a single population. The oblong to ovate shells of the adult are 0.5 to 0.6 in (14 to 16 mm) long, have 5 to 7 whorls, and have a white base color with no bands or a variable number of spiral bands around the shells (Pilsbry and Cooke 1912–1914, pp. 67, 83–86). Adults may attain an age exceeding 15 to 20 years, and reproductive output is low, with an adult snail giving birth to 4 to 6 live young per year (Hadfield and Miller 1989, pp. 10–12). *Partulina variabilis* is arboreal and nocturnal, and grazes on fungi and algae growing on leaf surfaces (Pilsbry and Cooke 1912–1914, p. 103). This snail is found on the following native host plants: *Metrosideros polymorpha*, *Broussaisia arguta*, *Psychotria* spp., *Coprosma* spp., *Melicope* spp., and dead *Cibotium glaucum*. Occasionally *Partulina variabilis* is found on nonnative plants such as *Psidium guajava* and *Cordyline australis* (Hadfield 1994, p. 2). Historically, *Partulina variabilis* was found in wet and mesic *M. polymorpha* forests on Lanai. There are no historical population estimates for this snail, but qualitative accounts of Hawaiian tree snails indicate they were widespread and abundant, possibly numbering in the tens of thousands between the 1800s and early 1900s (Hadfield 1986, p. 69). In 1993, 111 individuals of *P. variabilis* were found during surveys conducted in its historical range. Subsequent surveys in 1994, 2000, 2001, and 2005 documented 175, 14, 6, and 90 individuals, respectively, in the lowland wet, montane wet, and wet cliff ecosystems in central Lanai (Hadfield 2005, pp. 3–5; TNC 2007).

#### Summary of Comments and Recommendations

On June 11, 2012, we published a proposed rule to list 38 Maui Nui species (35 plants and 3 tree snails) as endangered and reevaluate the listing of 2 Maui Nui plant species as endangered throughout their ranges, and to designate critical habitat for 135 species (77 FR 34464). The proposed rule opened a 60-day comment period. On August 9, 2012 (77 FR 47587), we

extended the comment period for the proposed rule for an additional 30 days, ending September 10, 2012. We requested that all interested parties submit comments or information concerning the proposed listing and designation of critical habitat for 135 species. We contacted all appropriate State and Federal agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment. In addition, we published a public notice of the proposed rule on June 20, 2012, in the local Honolulu Star Advertiser, Maui Times, and Molokai Dispatch newspapers, at the beginning of the comment period. We received three requests for public hearings. On January 31, 2013, we published a notice (78 FR 6785) reopening the comment period on the June 11, 2012, proposed rule (77 FR 34464), announcing the availability of our draft economic analysis (DEA) on the proposed critical habitat, and requesting comments on both the proposed rule and the DEA. This comment period closed on March 4, 2013. In addition, in that same notice (January 31, 2013; 78 FR 6785) we announced a public information meeting and hearing, which we held in Kihei, Maui, on February 21, 2013.

During the comment periods, we received a total of 47 comment letters on the proposed listing of 38 species, reevaluation of listing for 2 species, and proposed designation of critical habitat. For the reasons stated above, in this final rule we address only the comments regarding the proposed listing of 38 species and reevaluation of listing for 2 species. Ten of the 47 letters contained comments on both the proposed listing and proposed designation of critical habitat. Two of the 47 letters contained comments only on the proposed listing of 38 species and reevaluation of listing for 2 species. Three of the four peer reviewers who provided comments commented on the proposed listing of one or more of the 38 species or on the proposed listing and proposed critical habitat designation. One commenter was a State of Hawaii agency (Hawaii Department of Health), one was a Federal agency (Kalaupapa National Historical Park), and eight were nongovernmental organizations or individuals. During the February 21, 2013, public hearing, 25 individuals or organizations made comments on the proposed listing.

All substantive information provided during the comment periods related to the listing decisions has either been incorporated directly into this final determination or is addressed below. Information we received related to the

proposed critical habitat designation will be addressed in that final rule. Comments received are grouped into general issues specifically relating to the proposed listing status of the 35 plants or the proposed listing status of the 3 tree snails, and are addressed in the following summary and incorporated into the final rule as appropriate. No comments were received regarding the reevaluation of listing for *Cyanea grimesiana* ssp. *grimesiana* or *Santalam healeakalae* var. *lanaiense*. No comments were received regarding the delisting of *Gahnia lanaiensis* due to taxonomic error.

#### Peer Review

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited expert opinions from 10 knowledgeable individuals with scientific expertise on the Maui Nui plants, snails, and forest birds and their habitats, including familiarity with the species, the geographic region in which these species occur, and conservation biology principles. We received responses from four of the peer reviewers. Of these four peer reviewers, one provided comments only on the proposed critical habitat designation for two endangered forest birds. These comments are not addressed in this final rule, which addresses only the listing of the 38 Maui Nui species (35 plants and 3 tree snails), and the reaffirmation of listing of 2 Maui Nui plant species. Three peer reviewers provided comments on the listing of the 38 Maui Nui species and reevaluation of listing for 2 species. These peer reviewers generally supported our methodology and conclusions. Two reviewers supported the Service's ecosystem-based approach for organizing the rule and for focusing on the actions needed for species conservation and management, and all three reviewers provided new information on one or more of the Maui Nui species, which we incorporated into this final rule. In addition, peer reviewers provided information on citations for published studies on ungulate exclusions and nonnative plant control. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of 38 species and reevaluation of the listing of 2 species. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

#### General Peer Review Comments

(1) *Comment:* One peer reviewer noted the absence of a literature cited section for the proposed rule.

*Our Response:* Although not included with the proposed rule itself, information on how to obtain a list of our supporting documentation used was provided in the proposed rule under Public Comments and References Cited (77 FR 34464; June 11, 2012). In addition, lists of references cited in the proposed rule (77 FR 34464; June 11, 2012) and in this final rule are available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R1-ES-2011-0098, and upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

(2) *Comment:* One peer reviewer provided additional information regarding the biogeographical differences between east and west Maui.

*Our Response:* We have included this information in this final rule and corrected statements about the range of annual rainfall on east Maui (Giambelluca *et al.* 2011), the diversity of vegetation in the mesic and wet ecosystems of east Maui relative to west Maui (Price 2004, p. 493), and the geologic age of the youngest lava flows found within the Cape Kinau region of east Maui (Sherrod *et al.* 2007, p. 40) (see *The Islands of Maui Nui*, above).

#### Peer Review Comments on Plants

(3) *Comment:* One peer reviewer suggested that the proposed rule's discussion about invasive plant species did not emphasize a comparison of the wide-ranging level of impacts between the various invasive plant species.

*Our Response:* In the proposed rule, we provided a list of 71 nonnative plant species that have been documented as serious and ongoing threats to 36 of the 40 species proposed or reevaluated for listing throughout their ranges by destroying or modifying habitat. We provided a short description for each of the 71 nonnative plant species that included the best available information on growth form, place of origin, reproductive biology, dispersal, competition with native species, environmental tolerance, and measures for their control in Hawaiian habitats, as well as synergistic impacts with other habitat modifying threat factors such as nonnative ungulates, agricultural development, and fire. In addition, we identified the nonnative plant species documented as threats in each of the 10 ecosystems. Finally, we identified each species that is considered invasive by one or more of the following sources:

Hawaii-Pacific Weed Risk Assessment, U.S. Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS) plant database (2011), or the Hawaii State noxious weed list (H.A.R. Title 4, Subtitle 6, Chapter 68). Therefore, we believe the information we provided in the proposed rule adequately emphasizes a comparison of the wide-ranging level of impacts between the various invasive plant species.

(4) *Comment:* One peer reviewer suggested that we understated the seriousness of the effects of the invasive plant species *Blechnum appendiculatum* and provided additional information about the ecology of this species to better illustrate its impacts.

*Our Response:* We appreciate the information provided for the invasive plant *Blechnum appendiculatum* and have included it in our final rule (see Summary of Changes From Proposed Rule, below).

(5) *Comment:* One peer reviewer recommended that we include, where applicable, further elaboration on the synergistic interactions between nonnative plants and animals, and global climate change, and their confluent impacts upon native habitats described in the proposed rule.

*Our Response:* We discuss the synergistic effects of climate change and nonnative species under "Habitat Destruction and Modification by Climate Change" and "Summary of Habitat Destruction and Modification," below; however, the magnitude and intensity of the impacts of global climate change and increasing temperatures on native Hawaiian ecosystems are unknown at this time.

(6) *Comment:* Although drought was not identified as a threat to *Schiedea laui* in our proposed rule, one peer reviewer suggested that it may also be a threat to this species. According to the reviewer, between 1998 and 2000, 7 of the 16 known mature individuals died from prolonged drought. In addition, the reviewer suggested that drought should be considered a threat to *S. salicaria* as it exacerbates the likelihood of fire, which is identified as a threat to this species.

*Our Response:* Drought was indicated as a threat to *Schiedea laui* with the observation of the extirpation of 7 of the 16 individuals by 2000 in Wagner *et al.* (2005b); however, we have information from more recent botanical surveys and observations that the current threats to individuals at this location are flooding and landslides (MNTF 2010). In the long term, drought may be a threat if this species is dependent upon the constant

water source provided at the grotto in which it occurs, and annual precipitation amounts fall due to weather changes associated with the global warming trend. Also, we agree that drought can lead to increased incidences of wildfire, especially in the area of west Maui where *S. salicaria* occurs. We appreciate the information provided by the reviewer and have incorporated it, as appropriate, into TABLE 4—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 40 MAUI NUI SPECIES and “Habitat Destruction and Modification Due to Landslides, Rockfalls, Treefalls, Flooding, and Drought” in this final rule (see below).

(7) *Comment*: One peer reviewer noted that our proposed rule states that nonnative plants in the lowland mesic ecosystem and the lowland dry ecosystem are a threat to the plant *Schiedea salicaria*. According to the reviewer, *S. salicaria* is usually found in lowland dry habitats, not in lowland mesic habitat.

*Our Response*: In our proposed rule, *Schiedea salicaria* is reported from three occurrences in the lowland dry ecosystem on west Maui (77 FR 34464, Table 2C and p. 34481; June 11, 2012). This species was included as one of the proposed species affected by nonnative plants in the lowland mesic ecosystem (see “Nonnative Plants in the Lowland Mesic Ecosystem” in the proposed rule) in error. We appreciate the correction.

(8) *Comment*: One peer reviewer corrected our description of hybrid swarms in the discussion of the proposed plant *Schiedea salicaria* to say that a hybrid swarm consists of hybrids between parent species, and subsequently formed progeny from crosses among hybrids and crosses of hybrids to parental species. While this process is noted as a threat to *S. salicaria* in Table 3 and in Proposed Determination for 40 Species in our proposed rule, the reviewer points out that the hybridization process is natural when *S. salicaria* and *S. menziesii* co-occur and because of the dynamics in this hybrid zone, traits of *S. salicaria* prevail and replace those of *S. menziesii*. The reviewer notes, however, that populations of both species will likely remain distinct because the two species do not overlap throughout much of their range.

*Our Response*: We appreciate the peer reviewer’s comments and have added that the traits of *Schiedea salicaria* prevail and replace those of *S. menziesii* in hybrid zones (see Description of the 40 Maui Nui Species, above). In addition, we have removed hybridization as a threat to *S. salicaria*

in this final rule; however, wildfires could possibly adversely impact the remaining non-hybridizing occurrences of *S. salicaria* on west Maui (see “Habitat Destruction and Modification by Fire,” below).

(9) *Comment*: One peer reviewer suggested that we highlight the positive interactions between drought and nonnative plant species, to the detriment of native plant species, in our discussion of “Climate Change and Precipitation.” According to this reviewer, these effects may be subtle, as demonstrated by *Blechnum appendiculatum* (see *Comment 4*, above), or dramatic, as demonstrated during a fire on west Maui that occurred in the area of the two largest populations of *Schiedea salicaria*, and likely spread rapidly due to the presence of invasive nonnative grasses and drought conditions.

*Our Response*: We agree that in the Hawaiian Islands there is a positive correlation between drought (caused by a reduction in moisture availability due to long periods of decline in annual precipitation), the presence of nonnative plants (particularly fire-prone grasses), and wildfire. We discuss the effects of the grass/fire cycle and the contribution to this cycle by drying trends caused by global warming (see “Habitat Destruction and Modification by Fire,” and “Climate Change and Precipitation,” below).

(10) *Comment*: One peer reviewer suggested that our discussion of the effects of the nonnative grass *Pennisetum setaceum* (*Cenchrus setaceus*; fountain grass) on dry forests on Hawaii Island should include direct competition with native species in addition to the threat it poses to native habitat from wildfires.

*Our Response*: The peer reviewer is referring to our discussion of “Habitat Destruction and Modification by Fire.” In that discussion, we note that on a post-burn survey at Puu Waawaa on Hawaii Island no regeneration of native canopy plants was occurring within the burn area. According to Takeuchi (1991, pp. 4, 6) nonnative *Pennisetum* sp. increased the number of fires and suppressed the establishment of native plants after a fire. We appreciate the additional information provided by the reviewer, including citations for published articles on the effects of nonnative fountain grass on wildfire and competition with native plant species, and we have added the information to our final rule (see “Habitat Destruction and Modification by Fire,” below).

(11) *Comment*: One peer reviewer noted that the discussion on invasive

plant species did not include sufficient information regarding those species for which the State of Hawaii has introduced biological control agents. The peer reviewer specifically highlighted four invasive plants, *Psidium cattleianum* (strawberry guava), *Clidemia hirta* (Koster’s curse), *Hedychium gardnerianum* (kahili ginger), and *Cyathea cooperi* (*Sphaeropteris cooperi*, Australian tree fern) and suggested that we include further discussion on the potential importance of biocontrol in addressing the very severe threats posed by these otherwise intractable invasive plant species.

*Our Response*: We agree that the use of biological control is a significant contribution to a multi-layered approach at management of the various nonnative plants threatening Hawaiian native flora. Between 1902 and 2010, approximately 84 insect and fungal agents have been introduced in Hawaii to control approximately 24 target nonnative plants (Conant *et al.* [in press], pp. 1–2, 15–19). Approximately 42 of these biological control agents are established in the Hawaiian Islands, and 12 of these have demonstrated substantial effects (i.e., the targeted nonnative plant species have been suppressed over a large portion of their ranges) toward control of their intended nonnative plant target, including *Ageratina adenophora* (Maui pamakani), *A. riparia* (Hamakua pamakani), and *Lantana camara* (lantana) (McFadyen 2000, pp. 4–7; Conant *et al.* [in press], pp. 1–2, 15–19). These three nonnative plants pose serious and ongoing threats to habitat in six of the ecosystems (lowland dry, lowland wet, montane mesic, montane wet, dry cliff, and wet cliff), that support one or more of the 40 species addressed in this final rule (see “Habitat Destruction and Modification by Nonnative Plants” in the June 11, 2012 (77 FR 34464), proposed rule). The Service remains cautiously optimistic about the use of biological control agents as a potentially significant contribution to a multi-layered approach to management of the various nonnative plants threatening Hawaiian native flora, including the recent introductions to control the ubiquitous, nonnative strawberry guava that poses a serious and ongoing threat to habitat in five of the ecosystems (lowland mesic, lowland wet, montane dry, montane mesic, and montane wet) that support one or more of the 40 species addressed in this final rule (see “Habitat Destruction and Modification by Nonnative Plants” in the June 11, 2012

(77 FR 34464), proposed rule). However, the lack of post-introduction monitoring for most past introductions is of concern, and the largely anecdotal evaluations of past introductions precludes our ability to sufficiently evaluate and conjecture, upon their long-term success.

#### Peer Review Comment on Lanai Tree Snails

(12) *Comment*: One peer reviewer recommended additional emphasis on the impacts of axis deer and mouflon sheep upon the habitat of the snails. The reviewer stated that the feeding and trampling activities of these ungulates removes the fern and vegetation layer around the snails' host trees, so that dispersal of snails between host substrates is either prevented or greatly reduced.

*Our Response*: We agree with the peer reviewer that the feeding and trampling activities of ungulates removes the fern and vegetation layer around the snails' host trees, and we have included information regarding the impact of axis deer and mouflon sheep upon the habitat of the Lanai tree snails in this final rule (see TABLE 4—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 40 MAUI NUI SPECIES and “Habitat Destruction and Modification by Introduced Ungulates,” below).

#### Comments From the State of Hawaii

(13) *Comment*: The Hawaii Department of Health stated that they had no comments on the proposed rule but reserved the right to future comments. In addition, their letter directed us to their Standard Comments on their Web site (<http://www.hawaii.gov/health/environmental/env-planning/landuse/landuse.html>) and stated that any comments specifically applicable to our proposed rule should be adhered to.

*Our Response*: We reviewed the Department of Health's Web site, and specifically the Landuse Planning Review Program, and determined that the Standard Comments referred to above do not apply to our June 11, 2012, proposed rulemaking or to this final rule. Standard Comments provided by the seven environmental programs (Hazard Evaluation and Emergency Response Office, Clean Air Branch, Clean Water Branch, Safe Drinking Water Branch, Solid and Hazardous Waste Branch, Wastewater Branch, and Indoor and Radiological Health Branch) within the Hawaii Department of Health are intended to help developers to better prepare land use planning documents such as environmental assessments,

environmental impact statements, or permit applications.

#### Comments From Federal Agencies

Haleakala National Park (Park) provided information on one or more of the 37 plant species addressed in this final rule which occur in the Park, and this information was incorporated, as appropriate, into Description of the 40 Maui Nui Species, above.

(14) *Comment*: Kalaupapa National Historical Park (KNHP) agreed with and supported the ecosystem-based approach in our June 11, 2012, proposed rule, for grouping plants and defining their habitat consistently. According to KNHP, this approach will aid the management of endangered and threatened plants as part of the collection of native communities across the landscape. Descriptions of individual listed species, habitat, and threats will be a good resource to managers and will serve as a basis for planning future conservation measures. The proposed listing of the “rarest of the rare” PEPP [Plant Extinction Prevention Program] species will provide a benefit to the National Park Service by improving their ability to gain funds for the protection, propagation, and outplanting of these rare plants. Improved funding will help with KNHP's ongoing collaboration with partners, including the Molokai Plant Extinction Prevention Program and The Nature Conservancy.

*Our Response*: We appreciate the Park's comments regarding the proposal to list the 38 Maui Nui species and to reevaluate the listing of 2 species. We agree that using an ecosystem-based approach to organize this rule will help provide for more focused conservation efforts and concerted management efforts to address the common threats that occur across these ecosystems.

#### Public Comments on the Proposed Listing of 38 Species and Reevaluation of Listing of 2 Species

(15) *Comment*: One commenter stated that much of the referenced material is not available for public review. The commenter further stated that reliance on certain “unpublished, non-public data deprives the public of the opportunity to review and comment on the basis for the Service's asserted justification in the proposed rule.” According to the commenter, “such action is arbitrary, capricious and an abuse of the Service's discretion, otherwise not in accordance with law, in excess of statutory jurisdiction, authority, or limitations, and short of statutory right, without observance of

procedure required by law; and unsupported by substantial evidence.”

*Our Response*: See also *Comment* (1) *Response*, above. Complete lists of references, including unpublished information, cited in the proposed rule (77 FR 34464; June 11, 2012) and in this final rule are available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R1-ES-2011-0098, and upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**, above). In addition, as stated in our proposed rule, all supporting documentation used in preparing the proposed rule was available upon request and for public inspection, by appointment, at the U.S. Fish and Wildlife Service Pacific Islands Fish and Wildlife Office. All supporting documentation used in our rulemakings is a matter of public record; however, the number of sources referenced are often voluminous or subject to copyright restrictions. Therefore, it is not possible for us to post all information sources used on the Internet. However, any of our supporting references cited in this or any rulemaking are always available upon request.

(16) *Comment*: One commenter objected to the proposed listing of the two Lanai tree snails, *Partulina semicarinata* and *Partulina variabilis*, because, in their view, the Service does not have sufficient information regarding the historical population estimates and the lack of comprehensive surveys. The commenter disagreed with our determination in the proposed rule that these tree snails are “vulnerable to extinction due to threats associated with low number of individuals and populations” (77 FR 34507; June 11, 2012).

*Our Response*: Under the Act, we determine whether a species is an endangered species or a threatened species because of any of five factors (see Summary of Factors Affecting the 40 Maui Nui Species, below), and we are required to make listing determinations solely on the basis of the best available scientific and commercial data available (see 16 U.S.C. 1533(a)(1) and (b)(1)(A)). The threats to the two Lanai tree snail species, as well as other endangered tree snails in the Hawaiian Islands, are well-documented (see Summary of Factors Affecting the 40 Maui Nui Species, below). Although there are no historical population estimates for these two tree snails, qualitative accounts of Hawaiian tree snails indicate they were widespread and abundant, possibly numbering in the tens of thousands between the 1800s and early 1900s (Hadfield 1986, p. 69). However, the best available survey

information, conducted between 1993 and 2005, indicates that currently *Partulina semicarinata* and *Partulina variabilis* total fewer than 120 individuals on Lanai (Hadfield 2005, pp. 3–5). Based on the information regarding the current status of the species and ongoing threats to the remaining few individuals, we have determined that these species are presently in danger of extinction; definitive quantitative data regarding historical population numbers are not necessary to make this determination. The problems associated with small population size (e.g., inbreeding depression for snails) and vulnerability to random demographic fluctuations or natural catastrophes are magnified by synergistic interactions with other threats (e.g., predation by nonnative rats or habitat destruction or modification by nonnative ungulates). Therefore, we disagree with the commenter, and believe these two tree snail species are vulnerable to extinction due to their low number of individuals and populations.

(17) *Comment:* Several commenters noted the threat of deer and goats to *Canavalia pubescens* throughout its range on Maui, with specific impacts to populations on the Palauea lava flow and Ahihi-Kinau. The commenters also recommended that fenced areas and regular monitoring are necessary to protect this species from the threat of ungulates in these areas.

*Our Response:* We agree that deer and goats constitute a threat to the coastal and lowland dry ecosystems in which *Canavalia pubescens* is known to occur (see “Habitat Destruction and Modification by Introduced Ungulates,” below). In this final rule, we noted the destruction of *Canavalia pubescens* at Ahihi-Kinau Natural Area Reserve in 2010 (see Description of the 40 Maui Nui Species, above) and acknowledge the threat of herbivory by deer and goats on *Canavalia pubescens* (see “Introduced Ungulates” in *Disease or Predation*, below).

(18) *Comment:* Several commenters noted the occurrence of *Canavalia pubescens* or awikiwiki on lands owned by Honuaula Partners.

*Our Response:* We appreciate this information and note that information in our files indicates that *Canavalia pubescens* or awikiwiki occurs in this area.

#### Summary of Changes From Proposed Rule

In preparing this final rule, we reviewed and fully considered comments from the public on the proposed listing for 38 species and reevaluation of listing for 2 species. This

final rule incorporates the following substantive changes to our proposed listing, based on the comments we received:

(1) We added the montane mesic ecosystem to the listed plant *Phyllostegia haliakalae* in the following locations in this final rule: Description of the 40 Maui Nui Species (above), Table 3 (above), and Table 4 (below), based on comments we received.

(2) We are revising the specific negative impacts of the nonnative plant *Blechnum appendiculatum* as follows, based on peer review comments:

*Blechnum appendiculatum* (NCN) is a fern with fronds to 23 in (60 cm) long that forms large colonies, outcompeting many native fern species (Palmer 2003, p. 81). This species is far more drought tolerant than native fern species. It forms thick mats that prevent regeneration from seeds of native species, and appears to successfully outcompete native ferns. All of these attributes compound the effects of the presence of this nonnative fern on native habitat (Weller *et al.* 2011, pp. 676–677).

(3) We added drought as a threat to the listed plants *Canavalia pubescens* and *Schiedea salicaria* in the following locations in this final rule: Table 4 and “Habitat Destruction and Modification Due to Landslides, Rockfalls, Treefalls, Flooding, and Drought,” below, based on comments we received.

#### Status Assessment for the 40 Maui Nui Species

##### Summary of Factors Affecting the 40 Maui Nui Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (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; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In considering what factors might constitute threats to a species we must look beyond the exposure of the species to a particular factor to evaluate whether

the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to warrant listing the species under the Act. The information must include evidence sufficient to show that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

If we determine that the level of a threat posed to a species by one or more of the five listing factors is such that the species meets the definition of either endangered or threatened under section 3 of the Act, that species may then be listed as endangered or threatened. The Act defines an endangered species as “in danger of extinction throughout all or a significant portion of its range,” and a threatened species as “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The threats to each of the individual 40 Maui Nui species are summarized in Table 4, and discussed in detail below.

#### Assumptions

We acknowledge that the specific nature of the threats to the individual species in this final rule are not completely understood. Scientific research directed toward each of the 40 species is limited because of their rarity and the challenging logistics associated with conducting field work in Hawaii (e.g., areas are typically remote, difficult to access and work in, and expensive to survey in a comprehensive manner). However, there is information available on many of the threats that act on Hawaiian ecosystems, and, for some ecosystems, these threats are well studied and understood. Each of the native species that occurs in Hawaiian ecosystems suffers from exposure to those threats. For the purposes of our listing determination, our assumption is that the threats that act at the ecosystem level also act on each of the species that occurs in those ecosystems (although in some cases we have additionally identified species-specific threats, such as predation by nonnative invertebrates).

The following constitutes a list of ecosystem-level threats that affect the 40 species in 10 ecosystems on the islands of Maui Nui:

(1) Foraging and trampling of native plants by ungulates, including feral pigs (*Sus scrofa*), goats, cattle (*Bos taurus*), axis deer (*Axis axis*), or mouflon sheep (*Ovis gmelini musimon*), which can result in severe erosion of watersheds because these mammals inhabit terrain that is often steep and remote (Cuddihy and Stone 1990, p. 63). Foraging and trampling events destabilize soils that support native plant communities, bury or damage native plants, and have adverse water quality effects due to runoff over exposed soils.

(2) Disturbance of soils by feral pigs from rooting, which can create fertile seedbeds for alien plants (Cuddihy and Stone 1990, p. 65).

(3) Increased nutrient availability as a result of pigs rooting in nitrogen-poor soils, which facilitates establishment of alien weeds. Alien weeds are more adapted to nutrient rich soils than native plants (Cuddihy and Stone 1990, p. 63), and rooting activity creates open areas in forests allowing alien species to completely replace native stands.

(4) Ungulate destruction of seeds and seedlings of native plant species (Cuddihy and Stone 1990, p. 63), which facilitates the conversion of disturbed areas from native to nonnative vegetative communities.

(5) Rodent damage to plant propagules, seedlings, or native trees, which changes forest composition and structure (Cuddihy and Stone 1990, p. 67).

(6) Feeding or defoliation of native plants from alien insects, which can

reduce geographic ranges of some species because of damage (Cuddihy and Stone 1990, p. 71).

(7) Alien insect predation on native insects, which affects pollination of native plant species (Cuddihy and Stone 1990, p. 71).

(8) Significant changes in nutrient cycling processes because of large numbers of alien invertebrates such as earthworms, ants, slugs, isopods, millipedes, and snails, resulting in changes to the composition and structure of plant communities (Cuddihy and Stone 1990, p. 73).

Each of the above threats is discussed in more detail below, and summarized in Table 4.

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**TABLE 4.—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 40 MAUI NUI SPECIES**

Species	Ecosystem	Factor A						Factor B	Factor C			Factor D	Factor E	
		Agriculture and urban development	Ungulates	Non native plants	Fire	Stochastic Events	Climate Change		Over-utilization	Disease	Predation/Herbivory by ungulates			Predation/Herbivory by other NN vertebrates
<b>Plants</b>														
<i>Bidens campylothecha</i> ssp. <i>pentanera</i>	LD, LM, MM, MW, DC, WC		P, G, D	X	X	H	Pt			P, G, D	R		X	HY
<i>Bidens campylothecha</i> ssp. <i>waihoiensis</i>	LW, MW, WC		P, G, D	X		F, H	Pt			P, G, D	R		X	HY
<i>Bidens conjuncta</i>	LW, MW, WC		P, G	X		H	Pt			P, G	R		X	
<i>Calamagrostis hillebrandii</i>	MW		P	X		H	Pt			P			X	

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Species	Ecosystem	Factor A						Factor B	Factor C			Factor D	Factor E	
		Agriculture and urban development	Ungulates	Non native plants	Fire	Stochastic Events	Climate Change		Predation/Herbivory by other NN vertebrates	Predation/Herbivory by NN invertebrates	Inadequate existing regulatory mechanisms			
<i>Canavalia pubescens</i>	CO, LD	X	P, G, D, C	X	X	H, DR	Pt			P, G, D, C			X	
<i>Cyanea asplenifolia</i>	LM, LW		P, G, D, C	X		L, H	Pt			P, G, D, C	R	S	X	
<i>Cyanea davalliorum</i>	LW, MW		P	X		F, H	Pt			P	R	S	X	
<i>Cyanea grimesiana</i> <i>ssp. grimesiana</i>	LW, WC		P, G, D	X		L, H	Pt			P, G, D	R	S	X	LN
<i>Cyanea horrida</i>	MM, MW, WC		P	X		DR, F, L, TF, H	Pt			P	R	S	X	LN
<i>Cyanea kunthiana</i>	LW, MM, MW		P	X		H	Pt			P	R	S	X	
<i>Cyanea magnicalyx</i>	LW, MM, WC		P	X	X	L, TF, H	Pt			P	R	S	X	LN

**TABLE 4.—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 40 MAUI NUI SPECIES**

Species	Ecosystem	Factor A						Factor B	Factor C			Factor D	Factor E	
		Agriculture and urban development	Ungulates	Non native plants	Fire	Stochastic Events	Climate Change		Disease	Predation/Herbivory by other NN vertebrates	Predation/Herbivory by NN invertebrates			Inadequate existing regulatory mechanisms
<i>Cyanea maritae</i>	LW, MW		P	X		L, TF, H	Pt		P	R	S	X	Other species-specific threats	LN, T
<i>Cyanea mauiensis</i>	LM, DC		P	X	X	L, TF, H	Pt		P	R	S	X		LN
<i>Cyanea munroi</i>	WC		G, D	X		TF, H	Pt		G, D	R	S	X		LN
<i>Cyanea obnusa</i>	LD, MM		P, G, D, C	X	X	H	Pt		P, G, D, C	R	S	X		HY, LN
<i>Cyanea profuga</i>	LM, MW		P, G	X		F, L, RF, TF, H	Pt		P, G	R	S	X		LN
<i>Cyanea solanacea</i>	LM, LW, MM, MW		P, G	X		L, H	Pt		P, G	R	S	X		LN
<i>Cyrtancho ferripilosa</i>	MM, MW		P, G			H	Pt		P, G			X		LN

**TABLE 4.—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 40 MAUI NUI SPECIES**

Species	Ecosystem	Factor A						Factor B	Factor C			Factor D	Factor E			
		Agriculture and urban development	Ungulates	Non native plants	Fire	Stochastic Events	Climate Change		Over-utilization	Predation/Herbivory by ungulates	Predation/Herbivory by other NN vertebrates			Predation/Herbivory by NN invertebrates		
<i>Cyrtandra filipes</i>	LM, LW, WC		P, G, D	X		L, H	Pt			P, G, D		S		X		Other species-specific threats
<i>Cyrtandra oxybapha</i>	MM, MW		P, G, C	X		H	Pt			P, G, C				X		
<i>Festuca molokaiensis</i>	LM		G	X	X	DR, H	Pt			G				X		LN
<i>Geranium hanaense</i>	MW		P	X		H	Pt			P				X		
<i>Geranium hillebrandii</i>	MM, MW		P	X		H	Pt			P		S		X		
<i>Mucuna sloanei</i> var. <i>persericea</i>	LW		P, C	X		H	Pt			P, C				X		
<i>Myrsine vaccinioides</i>	MW		P	X		H	Pt			P		R		X		

**TABLE 4.—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 40 MAUI NUI SPECIES**

Species	Ecosystem	Factor A						Factor B	Factor C			Factor D	Factor E	
		Agriculture and urban development	Ungulates	Non native plants	Fire	Stochastic Events	Climate Change		Over-utilization	Disease	Predation/Herbivory by ungulates			Predation/Herbivory by other NN vertebrates
<i>Peperomia subpetiolata</i>	MW		P	X		H	Pt			P	R	S	X	Other species-specific threats
<i>Phyllostegia bracteata</i>	LW, MM, MW, SB, WC		P, C	X	X	H	Pt			P, C		S	X	LN
<i>Phyllostegia haliakalae</i>	LM, MM, DC, WC		C	X	X	H	Pt			C		S	X	LN
<i>Phyllostegia pilosa</i>	LM, MW		P, G	X		H	Pt			P, G		S	X	LN
<i>Pitiosporum halophilum</i>	CO		P	X	X	H	Pt			P	R		X	LN
<i>Pleomele fernaldii</i>	LD, LM,		D, M	X	X	H	Pt			D, M	R		X	NR



**TABLE 4.—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 40 MAUI NUI SPECIES**

Species	Ecosystem	Factor A						Factor B	Factor C			Factor D	Factor E	
		Agriculture and urban development	Ungulates	Non native plants	Fire	Stochastic Events	Climate Change		Over-utilization	Disease	Predation/Herbivory by ungulates			Predation/Herbivory by NN vertebrates
<i>kauaiaensis</i>	MM					RF, H								
<i>Wikstroemia villosa</i>	LW, MM, MW		P	X		L, H	Pt		P	R	S	X	LN, T	
<b>Snails</b>														
<i>Newcombia cumingi</i> (Newcomb's tree snail)	LW										Flatworm Pt Snails	X	LN	
<i>Partulina semicarinata</i> (Lanai tree snail)	LW, MW, WC			X		DR, H	Pt		Pt	R, JC	Flatworm Pt Snails	X	LN	
<i>Partulina variabilis</i> (Lanai tree snail)	LW, MW, WC		D, M			DR, H	Pt		Pt	R, JC	Flatworm Pt	X	LN	

**TABLE 4.—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 40 MAUI NUI SPECIES**

Species	Ecosystem	Factor A						Factor B	Factor C			Factor D	Factor E
	Agriculture and urban development	Ungulates	Non native plants	Fire	Stochastic Events	Climate Change	Over-utilization	Disease	by ungulates	by other NN vertebrates	Predation/Herbivory by NN invertebrates	Inadequate existing regulatory mechanisms	Other species-specific threats
											Snails		

Factor A = Habitat Modification	CO = Coastal	P = Pigs	F = Flooding	LN = Limited Numbers
Factor B = Overutilization	LD = Lowland Dry	G = Goats	DR = Drought	HY = Hybridization
Factor C = Disease or Predation	LM = Lowland Mesic	D = Axis Deer	H = Hurricane	NN = Nonnative
Factor D = Inadequacy of Regulatory Mechanisms	LW = Lowland Wet	M = Mouflon	L = Landslide	NR = No Regeneration
Factor E = Other Species-Specific Threats	MD = Montane Dry	C = Cattle	T = Trampling	Pt = Potential
	MM = Montane Mesic	R = Rats	RF = Rockfalls	
	MW = Montane Wet	S = Slugs	TF = Treefalls	
	SB = Subalpine	JC = Jackson's		
	DC = Dry Cliff	chameleon		
	WC = Wet Cliff			

#### A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Hawaiian Islands are located over 2,000 mi (3,200 km) from the nearest continent. This isolation has allowed the few plants and animals that arrived in the Hawaiian Islands to evolve into many highly varied and endemic species (species that occur nowhere else in the world). The only native terrestrial mammals in the Hawaiian Islands are two bat taxa, the extant Hawaiian hoary bat (*Lasiurus cinereus semotus*) and an extinct, unnamed insectivorous bat (Ziegler 2002, p. 245). The native plants of the Hawaiian Islands, therefore, evolved in the absence of mammalian predators, browsers, or grazers. Many of the native species have lost unneeded defenses against threats such as mammalian predation and competition with aggressive, weedy plant species that are typical of continental environments (Loope 1992, p. 11; Gagne and Cuddihy 1999, p. 45; Wagner *et al.* 1999, pp. 3–6). For example, Carlquist (in Carlquist and Cole 1974, p. 29) notes “Hawaiian plants are notably free from many characteristics thought to be deterrents to herbivores (toxins, oils, resins, stinging hairs, coarse texture).” Native Hawaiian plants are therefore highly vulnerable to the impacts of introduced mammals and alien plants. In addition, species restricted and adapted to highly specialized locations (e.g., *Calamagrostis hillebrandii*) are particularly vulnerable to changes (from nonnative species, hurricanes, fire, and climate change) in their habitat (Carlquist and Cole 1974, pp. 28–29; Loope 1992, pp. 3–6; Stone 1989, pp. 88–95).

#### Habitat Destruction and Modification by Agriculture and Urban Development

The consequences of past land use practices such as agricultural or urban development have resulted in little or no native vegetation below 2,000 ft (600 m) throughout the Hawaiian Islands (TNC 2007), largely impacting the coastal, lowland dry, lowland mesic, and lowland wet ecosystems. Although agriculture has been declining in importance, large tracts of former agricultural lands are being converted into residential areas or left fallow (TNC 2007). In addition, Hawaii’s population increased almost 7 percent in the past 10 years, further increasing demands on limited land and water resources in the islands (Hawaii Department of Business, Economic Development and Tourism 2010).

Development and urbanization of coastal and lowland dry ecosystems on

Maui are a serious threat to one species in this final rule, *Canavalia pubescens*, which is dependent on these ecosystems and is currently found only in east Maui. Two individuals at Palaeua-Keahou were destroyed by development prior to 2001 (Oppenheimer 2000, in litt.). Future development plans for this area include a golf course and associated infrastructure, and housing (Altenberg 2007, p. 2–5; Greenlee 2013, in litt.). Although fewer than 20 individuals were known in this area as recently as 2010, no individuals have been found in site visits over the last 2 years (Altenberg 2010, in litt.; Greenlee 2013, in litt.).

#### Habitat Destruction and Modification by Introduced Ungulates

Introduced mammals have greatly impacted the native vegetation, as well as the native fauna, of the Hawaiian Islands. Impacts to the native species and ecosystems of Hawaii accelerated following the arrival of Captain James Cook in 1778. The Cook expedition and subsequent explorers intentionally introduced a European race of pigs or boars and other livestock, such as goats, to serve as food sources for seagoing explorers (Tomich 1986, pp. 120–121; Loope 1998, p. 752). The mild climate of the islands, combined with the lack of competitors or predators, led to the successful establishment of large populations of these introduced mammals, to the detriment of native Hawaiian species and ecosystems. The presence of introduced alien mammals is considered one of the primary factors underlying the alteration and degradation of native plant communities and habitats on Molokai, Lanai, and Maui. Ten ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, dry cliff, and wet cliff) on Molokai, Lanai, and Maui and their associated species are currently impacted by threats of the destruction or degradation of habitat due to nonnative ungulates (hoofed mammals), including pigs, goats, axis deer, mouflon, and cattle. Thirty-five of the 37 plant species and both species of *Partulina* tree snails (*Partulina semicarinata* and *P. variabilis*) in this final rule are exposed to direct and indirect negative impacts of feral ungulates (pigs, goats, axis deer, mouflon, and cattle), which result in the destruction and degradation of habitat for these native Maui Nui species (Table 4).

Pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests of the Hawaiian Islands, and are widely recognized as one of the greatest current

threats to forest ecosystems in Hawaii (Aplet *et al.* 1991, p. 56; Anderson and Stone 1993, p. 195). European pigs, introduced to Hawaii by Captain James Cook in 1778, hybridized with domesticated Polynesian pigs, became feral, and invaded forested areas, especially wet and mesic forests and dry areas at high elevations. The Hawaii Territorial Board of Agriculture and Forestry started a feral pig eradication project in the early 1900s that continued through 1958, removing 170,000 pigs from forests Statewide (Diong 1982, p. 63). Feral pigs are currently present on Niihau, Kauai, Oahu, Molokai, Maui, and Hawaii.

These feral animals are extremely destructive and have both direct and indirect impacts on native plant communities. While rooting in the earth in search of invertebrates and plant material, pigs directly impact native plants by disturbing and destroying vegetative cover, and trampling plants and seedlings. It has been estimated that at a conservative rooting rate of 2 square (sq)-yards (yd) per minute, with only 4 hours of foraging a day, a single pig could disturb over 1,600 sq-yd of groundcover per week (Anderson *et al.* 2007, p. 2).

Pigs may also reduce or eliminate plant regeneration by damaging or eating seeds and seedlings (further discussion of predation by nonnative ungulates is provided under Factor C, below). Pigs are a major vector for the establishment and spread of competing invasive nonnative plant species by dispersing plant seeds on their hooves and fur, and in their feces (Diong 1982, pp. 169–170), which also serves to fertilize disturbed soil (Matson 1990, p. 245; Siemann *et al.* 2009, p. 547). Pigs feed on the fruits of many nonnative plants, such as *Passiflora tarminiana* (banana poka) and *Psidium cattleianum* (strawberry guava), spreading the seeds of these invasive species through their feces as they travel in search of food. In addition, rooting pigs contribute to erosion by clearing vegetation and creating large areas of disturbed soil, especially on slopes (Smith 1985, pp. 190, 192, 196, 200, 204, 230–231; Stone 1985, pp. 254–255, 262–264; Medeiros *et al.* 1986, pp. 27–28; Scott *et al.* 1986, pp. 360–361; Tomich 1986, pp. 120–126; Cuddihy and Stone 1990, pp. 64–65; Aplet *et al.* 1991, p. 56; Loope *et al.* 1991, pp. 1–21; Gagne and Cuddihy 1999, p. 52). Ten of the Maui Nui ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, dry cliff, and wet cliff) and their associated species are adversely impacted by the destruction or

degradation of habitat due to pigs (see Table 4, above).

Goats native to the Middle East and India were also successfully introduced to the Hawaiian Islands in the late 1700s. Actions to control feral goat populations began in the 1920s (Tomich 1986, pp. 152–153); however, they still occupy a wide variety of habitats on Molokai and Maui and to a lesser degree on Lanai, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (van Riper and van Riper 1982, pp. 34–35; Stone 1985, p. 261; Kessler 2010, pers. comm.). Goats are able to access, and forage in, extremely rugged terrain, and they have a high reproductive capacity (Clarke and Cuddihy 1980, pp. C–19, C–20; Culliney 1988, p. 336; Cuddihy and Stone 1990, p. 64). Because of these factors, goats are believed to have completely eliminated some plant species from islands (Atkinson and Atkinson 2000, p. 21). Goats can be highly destructive to native vegetation, and contribute to erosion by eating young trees and young shoots of plants before they can become established, creating trails that damage native vegetative cover, promoting erosion by destabilizing substrate and creating gullies that convey water, and dislodging stones from ledges that can cause rockfalls and landslides and damage vegetation below (Cuddihy and Stone 1990, pp. 63–64). Nine of the described ecosystems on Molokai, Lanai, and Maui (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) and their associated species are adversely impacted by the destruction or degradation of habitat due to goats (see Table 4, above).

Axis deer were first introduced to Molokai in 1868, Lanai in 1920, and Maui in 1959 (Hobdy 1993, p. 207; Erdman 1996, pers. comm. cited in Waring 1996, in litt., p. 2; Hess 2008, p. 2). On Molokai, axis deer have likely spread throughout the island at all elevations (from the coast to the summit area at 4,961 ft (1,512 m)) (Kessler 2011, pers. comm.). The most current population estimate of axis deer on Molokai is between 4,000 and 5,000 individuals (Anderson 2003, p. 130). It is likely this is an underestimate of the total number of individuals as it was published almost a decade ago, and little management for deer control has been implemented. On Lanai, as of 2007, axis deer were reported to number approximately 6,000 to 8,000 individuals (The Aloha Insider 2008, in litt.; WCities 2010, in litt.). On Maui, five adults were released east of Kihei in 1959 (Hobdy 1993, p. 207; Hess 2008,

p. 2). By 1968, the population was estimated to be 85 to 90 animals, and by 1995, there were over 500 individuals on Ulupalakua Ranch alone (Erdman 1996, pers. comm. cited in Waring 1996, in litt., p. 2). As of 2001, there was concern that their numbers on Maui could expand to between 15,000 to 20,000 or more individuals within a few years (Anderson 2001, in litt.; Nishibayashi 2001, in litt.). According to Medeiros (2010a, pers. comm.) axis deer can be found in all but the uppermost ecosystems (subalpine and alpine) and montane bogs on Maui. Medeiros (2010a, pers. comm.) also observed that axis deer are increasing at such high rates on Maui that native forests are changing in unprecedented ways. According to Medeiros (2010a, pers. comm.), native plants will only survive in habitat that is fenced or otherwise protected from the grazing and trampling effects of axis deer. Kessler (2010, pers. comm.) and Hess (2010, pers. comm.) report axis deer up to 9,000 ft (2,743 m) in elevation on Maui, and Kessler suggests that no ecosystem is safe from the negative impacts of these animals. Montane bogs are also susceptible to impacts from axis deer. As the native vegetation dies off from the combined effects of grazing and trampling by axis deer, the soil dries out, and invasive nonnative plants gain a foothold. Eventually, the bog habitat and its associated native plants and animals are replaced by a grassland, shrubland, or forest habitat dominated by nonnative plants.

Axis deer are primarily grazers, but also browse numerous palatable plant species including those grown as commercial crops (Waring 1996, p. 3; Simpson 2001, in litt.). They prefer the lower, more openly vegetated areas for browsing and grazing; however, during episodes of drought (e.g., from 1998–2001 on Maui (Medeiros 2010a, pers. comm.)), axis deer move into urban and forested areas in search of food (Waring 1996, in litt., p. 5; Nishibayashi 2001, in litt.). Like goats, axis deer can be highly destructive to native vegetation and contribute to erosion by eating young trees and young shoots of plants before they can become established, creating trails that can damage native vegetative cover, promoting erosion by destabilizing substrate and creating gullies that convey water, and dislodging stones from ledges that can cause rockfalls and landslides and damage vegetation below (Cuddihy and Stone 1990, pp. 63–64). Browsing and trampling by axis deer also removes vegetation surrounding the host trees of the two Lanai tree snails so that

dispersal of snails between host substrates is either prevented or greatly reduced (Duvall 2012, in litt.). Nine of the described Maui Nui ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) and their associated species are adversely impacted by the destruction or degradation of habitat due to axis deer (see Table 4, above).

The mouflon sheep, native to Asia Minor, was introduced to the islands of Lanai and Hawaii in the 1950s as a managed game species, and has become widely established on these islands (Tomich 1986, pp. 163–168; Cuddihy and Stone 1990, p. 66; Hess 2008, p. 1). Mouflon have high reproduction rates; for example, the original population of 11 individuals on the island of Hawaii has increased to more than 2,500 in 36 years, even though hunted as a game animal (Hess 2008, p. 3). Mouflon only form large groups when breeding, thus limiting control techniques and hunting efficiency (Hess 2008, p. 3). Mouflon sheep are both grazers and browsers, and have decimated vast areas of native forest and shrubland through browsing and bark stripping (Stone 1985, p. 271; Cuddihy and Stone 1990, pp. 63, 66; Hess 2008, p. 3). In range studies done on the effects of mouflon grazing and browsing on the island of Hawaii, plant species found to be most affected were *Argyroxiphium sandwicense* ssp. *sandwicense* (ahinahina), an endangered species; *Acacia koa*; *Geranium* spp. (nohoanu or hinahina); *Sophora chrysophylla*; *Vaccinium* spp. (ohelo); and native grasses (Giffin 1981, pp. 22–23; Scowcroft and Conrad 1992, pp. 628–662; Hess 2008, p. 3). Mouflon also create trails and pathways through thick vegetation, leading to increased runoff and erosion through soil compaction. In some areas, the interaction of browsing and soil compaction leads to a change from native rainforest to grassy scrublands (Hess 2008, p. 3). Duvall (2012, in litt.) reports that mouflon sheep browsing and trampling removes vegetation surrounding host trees of the two Lanai tree snails, thus reducing or preventing snail dispersal between host trees. Seven of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane wet, dry cliff, and wet cliff) on Lanai and their associated species are adversely impacted by the destruction or degradation of habitat due to mouflon sheep (see Table 4, above).

Cattle, the wild ancestors of which were native to Europe, northern Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. Large feral herds (as many as 12,000 on the

island of Hawaii) developed as a result of restrictions on killing cattle decreed by King Kamehameha I (Cuddihy and Stone 1990, p. 40). While small cattle ranches were developed on Kauai, Oahu, Molokai, west Maui, and Kahoolawe, very large ranches of tens of thousands of acres were created on east Maui and Hawaii Island (Stone 1985, pp. 256, 260; Broadbent 2010, in litt.). Logging of native *Acacia koa* was combined with establishment of cattle ranches, quickly converting native forest to grassland (Tomich 1986, p. 140; Cuddihy and Stone 1990, p. 47). Feral cattle can presently be found on the islands of Maui and Hawaii, where ranching is still a major commercial activity. According to Kessler (2011, pers. comm.), there are approximately 300 individuals roaming east Maui up to the alpine ecosystem (i.e., 1,000 to 9,900 ft (305 to 3,000 m) elevation) with occasional observations on west Maui. Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest in areas grazed by cattle degrades to grassland pasture, and plant cover is reduced for many years following removal of cattle from an area. In addition, several alien grasses and legumes purposely introduced for cattle forage have become noxious weeds (Tomich 1986, pp. 140–150; Cuddihy and Stone 1990, p. 29). Five of the described ecosystems (lowland dry, lowland mesic, lowland wet, montane mesic, and montane wet) on Maui and their associated species are adversely impacted by the destruction or degradation of habitat due to feral cattle (see Table 4, above).

In summary, 37 of the 40 species dependent upon the 10 ecosystems identified in this final rule (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, dry cliff, and wet cliff) are exposed to both direct and indirect negative impacts of feral ungulates (pigs, goats, axis deer, mouflon, and cattle). These negative impacts result in the destruction and degradation of habitat for these 37 native species on Molokai, Lanai, and Maui. The effects of these nonnative animals include the destruction of vegetative cover; trampling of plants and seedlings; direct consumption of native vegetation; soil disturbance; dispersal of alien plant seeds on hooves and coats, and through the spread of seeds in feces; and creation of open, disturbed areas conducive to further invasion by nonnative pest plant

species. All of these impacts lead to the subsequent conversion of a plant community dominated by native species to one dominated by nonnative species (see “Habitat Destruction and Modification by Nonnative Plants,” below). In addition, because these mammals inhabit terrain that is often steep and remote (Cuddihy and Stone 1990, p. 59), foraging and trampling contributes to severe erosion of watersheds and degradation of streams. As early as 1900, there was increasing concern expressed about the integrity of island watersheds, due to effects of ungulates and other factors, leading to the establishment of a professional forestry program emphasizing soil and water conservation (Nelson 1989, p. 3).

#### Habitat Destruction and Modification by Nonnative Plants

Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices, including ranching, the deliberate introduction of nonnative plants and animals, and agricultural development (Cuddihy and Stone 1990, pp. 27, 58). The original native flora of Hawaii (species that were present before humans arrived) consisted of about 1,000 taxa, 89 percent of which were endemic (species that occur only in the Hawaiian Islands). Over 800 plant taxa have been introduced from elsewhere, and nearly 100 of these have become pests (e.g., injurious plants) in Hawaii (Smith 1985, p. 180; Cuddihy and Stone 1990, p. 73; Gagne and Cuddihy 1999, p. 45). Of these 100 nonnative pest plant species, close to 70 species have altered the habitat of 36 of the 40 species in this final rule (only *Cyrtandra ferripilosa*, *Schiedea jacobii*, *Partulina semicarinata*, and *P. variabilis* are not directly impacted by nonnative plants; see Table 4). Some of the nonnative plants were brought to Hawaii by various groups of people, including the Polynesians, for food or cultural reasons. Plantation owners (and the territorial government of Hawaii), alarmed at the reduction of water resources for their crops caused by the destruction of native forest cover by grazing feral and domestic animals, introduced nonnative trees for reforestation. Ranchers intentionally introduced pasture grasses and other nonnative plants for agriculture, and sometimes inadvertently introduced weeds as well. Other plants were brought to Hawaii for their potential horticultural value (Scott *et al.* 1986, pp. 361–363; Cuddihy and Stone 1990, p. 73).

Nonnative plants adversely impact native habitat in Hawaii, including the 10 Maui Nui ecosystems that support the 40 species identified in this final rule, and directly adversely impact 36 of these species, by: (1) Modifying the availability of light; (2) altering soil-water regimes; (3) modifying nutrient cycling; (4) altering the fire regime affecting native plant communities (e.g., successive fires that burn farther and farther into native habitat, destroying native plants and removing habitat for native species by altering microclimatic conditions to favor alien species); and (5) ultimately, converting native-dominated plant communities to nonnative plant communities (Smith 1985, pp. 180–181; Cuddihy and Stone 1990, p. 74; D’Antonio and Vitousek 1992, p. 73; Vitousek *et al.* 1997, p. 6). Nonnative plants (and animals) have contributed to the extinction of native species in the lowlands of Hawaii and have been a primary cause of extinction in upland habitats (Vitousek *et al.* 1987, in Cuddihy and Stone 1990, p. 74). The most-often cited effects of nonnative plants on native plant species are displacement through competition. Competition may be for water or nutrients, or it may involve allelopathy (chemical inhibition of other plants) (Smith 1985, in Cuddihy and Stone 1990, p. 74). Nonnative plants may also displace native species by preventing their reproduction, usually by shading and taking up available sites for seedling establishment (Vitousek *et al.* 1987 in Cuddihy and Stone 1990, p. 74).

Alteration of fire regimes clearly represents an ecosystem-level change caused by the invasion of nonnative grasses (D’Antonio and Vitousek 1992, p. 73). The grass life form supports standing dead material that burns readily, and grass tissues have large surface-to-volume ratios and can dry out quickly (D’Antonio and Vitousek 1992, p. 73). The flammability of biological materials is determined primarily by their surface-to-volume ratio and moisture content, and secondarily by mineral content and tissue chemistry (D’Antonio and Vitousek 1992, p. 73). The finest size classes of material (mainly grasses) ignite and spread fires under a broader range of conditions than do woody fuels or even surface litter (D’Antonio and Vitousek 1992, p. 73). The grass life form allows rapid recovery following fire; there is little above-ground structural tissue, so almost all new tissue fixes carbon and contributes to growth (D’Antonio and Vitousek 1992, p. 73). Grass canopies also support a microclimate in which surface temperatures are hotter, vapor

pressure deficits are larger, and the drying of tissues occurs more rapidly than in forest or woodlands (D'Antonio and Vitousek 1992, p. 73). Thus, conditions that favor fires are much more frequent in grasslands (D'Antonio and Vitousek 1992, p. 73). In summary, nonnative plants directly and indirectly affect 36 of the 40 species in this final rule by modifying or destroying their terrestrial habitat. Please refer to the proposed rule (77 FR 34464; June 11, 2012) for a list of nonnative plants and a discussion of their specific negative effects on the 36 affected Maui Nui species.

#### Habitat Destruction and Modification by Fire

Fire is an increasing, human-exacerbated threat to native species and native ecosystems in Hawaii. The historical fire regime in Hawaii was characterized by infrequent, low severity fires, as few natural ignition sources existed (Cuddihy and Stone 1990, p. 91; Smith and Tunison 1992, pp. 395–397). It is believed that prior to human colonization, fuel was sparse and inflammable in wet plant communities and seasonally flammable in mesic and dry plant communities. The primary ignition sources were volcanism and lightning (Baker *et al.* 2009, p. 43). Natural fuel beds were often discontinuous, and rainfall in many areas on most islands was, and is, moderate to high. Fires inadvertently or intentionally ignited by the original Polynesians in Hawaii probably contributed to the initial decline of native vegetation in the drier plains and foothills. These early settlers practiced slash-and-burn agriculture that created open lowland areas suitable for the later colonization of nonnative, fire-adapted grasses (Kirch 1982, pp. 5–6, 8; Cuddihy and Stone 1990, pp. 30–31). Beginning in the late 18th century, Europeans and Americans introduced plants and animals that further degraded native Hawaiian ecosystems. Pasture and ranching, in particular, created high fire-prone areas of nonnative grasses and shrubs (D'Antonio and Vitousek 1992, p. 67). Although fires were historically infrequent in mountainous regions, extensive fires have recently occurred in lowland dry and lowland mesic areas, leading to grass-fire cycles that convert forest to grasslands (D'Antonio and Vitousek 1992, p. 77).

Because several Hawaiian plants show some tolerance of fire, Vogl proposed that naturally occurring fires may have been important in the development of the original Hawaiian flora (Vogl 1969 in Cuddihy and Stone 1990, p. 91; Smith and Tunison 1992, p.

394). However, Mueller-Dombois (1981 in Cuddihy and Stone 1990, p. 91) points out that most natural vegetation types of Hawaii would not carry fire before the introduction of alien grasses, and Smith and Tunison (1992, p. 396) state that native plant fuels typically have low flammability. Because of the greater frequency, intensity, and duration of fires that have resulted from the introduction of nonnative plants (especially grasses), fires are now destructive to native Hawaiian ecosystems (Brown and Smith 2000, p. 172), and a single grass-fueled fire can kill most native trees and shrubs in the burned area (D'Antonio and Vitousek 1992, p. 74).

Fire represents a threat to 13 native plant species found in the coastal, lowland dry, lowland mesic, montane dry, montane mesic, and dry cliff ecosystems addressed in this final rule: *Bidens campylotheca* ssp. *pentamera*, *Canavalia pubescens*, *Cyanea magnicalyx*, *C. mauiensis*, *C. obtusa*, *Festuca molokaiensis*, *Phyllostegia bracteata*, *P. haliakalae*, *Pittosporum halophilum*, *Pleomele fernaldii*, *Santalum haleakalae* var. *lanaiense*, *Schiedea salicaria*, and *Stenogyne kauaulaensis* (see Table 4). Fire can destroy dormant seeds of these species as well as plants themselves, even in steep or inaccessible areas. Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimate conditions favorable to alien plants. Alien plant species most likely to be spread as a consequence of fire are those that produce a high fuel load, are adapted to survive and regenerate after fire, and establish rapidly in newly burned areas. Drought-tolerant grasses and ferns, particularly those that produce mats of dry material or retain a mass of standing dead leaves (e.g., *Pennisetum setaceum*, *Blechnum appendiculatum*) invade native forests and shrublands and provide fuels that allow fire to burn areas that would not otherwise easily burn (Fujioka and Fujii 1980, in Cuddihy and Stone 1990, p. 93; D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122; Weller *et al.* 2011, pp. 676–677; Weller 2012, in litt.). Other nonnative plants such as *Clidemia hirta* and pines (*Pinus* spp.) rapidly outcompete native plants and dominate areas opened by fire (Weller 2012, in litt.). Native woody plants may recover from fire to some degree, but fire shifts the competitive balance toward alien species (National Park Service 1989, in Cuddihy and Stone 1990, p. 93). On a post-burn

survey at Puuwaawaa on the island of Hawaii, an area of native *Diospyros* forest with undergrowth of the nonnative grass *Pennisetum setaceum*, Takeuchi noted that “no regeneration of native canopy is occurring within the Puuwaawaa burn area” (Takeuchi 1991, p. 2). Takeuchi (1991, pp. 4, 6) also stated that “burn events served to accelerate a decline process already in place, compressing into days a sequence which would ordinarily take decades,” and concluded that in addition to increasing the number of fires, the nonnative *Pennisetum* acted to suppress the establishment of native plants after a fire.

For decades, fires have impacted rare or endangered species and their habitat (Gima 1998, in litt.; Pacific Disaster Center 2011; Hamilton 2009, in litt.; Honolulu Advertiser, 2010). The islands of Molokai, Lanai, Maui, and Kahoolawe have experienced 1,291 brush fires between the years 1972 and 1999 that burned a total of 64,248 ac (26,000 ha) (Pacific Disaster Center 2011; County of Maui 2009, Chapter 3, p. 3). Between 2000 and 2003, the annual number of wildfires on Molokai, Lanai, and Maui jumped from 118 to 271, many of which each consumed more than 5,000 ac (2,023 ha) (Pacific Disaster Center 2011).

During the summer of 1998, a raging fire that began in Kaunakakai consumed over 15,000 ac (6,070 ha) on Molokai, including a portion of the Molokai Forest Reserve, consuming roughly 10 percent of the entire island (Gima 1998, in litt.). Molokai experienced three 10,000 ac (4,047 ha) wildfires between the years 2003 and 2004 (Pacific Disaster Center 2011). In late August through early September 2009, a massive wildfire burned for days and consumed approximately 8,000 ac (3,237 ha), including 600 ac (243 ha) of the remote Makakupaia section of the Molokai Forest Reserve, a small portion of TNC's Kamakou Preserve, and encroached upon Onini Gulch, Kalamaula and Kawela (Hamilton 2009, in litt.). Three species reported from Molokai's coastal and lowland mesic ecosystems (*Festuca molokaiensis*, *Phyllostegia haliakalae*, and *Pittosporum halophilum*) are at risk of negative impacts by fire because individuals of these species or their habitat are located in or near areas that were burned in previous fires.

The island of Lanai has experienced several wildfires in the last decade. In 2006, a wildfire burned 600 ac (243 ha) between Manele Road and the Palawai basin (2.5 mi (4 km) south of Lanai City) (The Maui News 2006, in litt.). In 2007, a brush fire occurred in the Mahana area, burning an estimated 30 ac (12 ha),

and in 2008, another 1,000 ac (405 ha) were burned by wildfire in the Palawai basin (The Maui News 2007, in litt.; KITV Honolulu 2008, in litt.). All known individuals of *Pleomele fernaldii* lie just southeast of the area burned during the Mahana fire and east of the Palawai basin fires. Many of these individuals could be decimated by one large fire.

Between the years 2007 and 2010, wildfires burned more than 8,650 ac (3,501 ha) on west Maui (Shimogawa 2010, in litt.; Honolulu Advertiser 2010, in litt.). In 2007, a fire that started along Honoapiilani Highway on the south coast of west Maui burned a total of 1,350 ac (546 ha), encroached into the West Maui Natural Area Reserve (Panaewa section), and placed at risk *Phyllostegia bracteata* and *Schiedea salicaria* (HDLNR 1989, pp. 53–63; KITV 2007, in litt.). In May 2010, another fire occurred farther south along the same highway, moved up the ridges of Olowalu, and eventually encompassed 1,100 ac (445 ha). Later the same year, a fire that started at Maalaea initially destroyed 200 ac (81 ha), and because of strong winds and drought conditions, continued to burn for 8 days, moved up Kealahou and nearby ridges, and encompassed a total of 6,200 ac (2,509 ha). This fire is on record as the largest brush fire that has occurred on Maui. Nine species reported from Maui's lowland dry, lowland mesic, montane dry, montane mesic, and dry cliff ecosystems (*Bidens campylotheca* ssp. *pentamera*, *Canavalia pubescens*, *Cyanea magnicalyx*, *C. mauiensis*, *C. obtusa*, *Phyllostegia bracteata*, *Santalum haleakalae* var. *lanaiense*, *Schiedea salicaria*, and *Stenogyne kauaulaensis*) are adversely impacted by fire because individuals of these species or their habitat are located in or near areas that were burned in previous fires or in areas at risk for fire due to the presence of highly flammable nonnative grasses and pine trees.

#### Habitat Destruction and Modification by Hurricanes

Hurricanes adversely impact native Hawaiian terrestrial habitat, including each of the 10 Maui Nui ecosystems addressed here and their associated species identified in this final rule. They do this by destroying native vegetation, opening the canopy and thus modifying the availability of light, and creating disturbed areas conducive to invasion by nonnative pest species (see "Specific Nonnative Plant Species Impacts," in our June 11, 2012, proposed rule (77 FR 34464)) (Asner and Goldstein 1997, p. 148; Harrington

*et al.* 1997, pp. 539–540). Canopy gaps allow for the establishment of nonnative plant species, which may be present as plants or as seeds incapable of growing under shaded conditions. Because many Hawaiian plant and animal species, including the 40 species in this final rule, persist in low numbers and in restricted ranges, natural disasters, such as hurricanes, can be particularly devastating (Mitchell *et al.* 2005, pp. 3–4).

Hurricanes affecting Hawaii were only rarely reported from ships in the area from the 1800s until 1949. Between 1950 and 1997, 22 hurricanes passed near or over the Hawaiian Islands, 5 of which caused serious damage (Businger 1998, pp. 1–2). In November 1982, Hurricane Iwa struck the Hawaiian Islands, with wind gusts exceeding 100 miles per hour (mph) (161 kilometers per hour (kph)), causing extensive damage, especially on the islands of Niihau, Kauai, and Oahu (Businger 1998, pp. 2, 6). Many forest trees were destroyed (Perlman 1992, pp. 1–9), which opened the canopy and facilitated the invasion of nonnative plants (Kitayama and Mueller-Dombois 1995, p. 671). Historically (prior to the introduction of nonnative, invasive plants to the Hawaiian Islands), it is likely that areas affected by hurricanes would eventually have been repopulated by native plants. However, any area affected by hurricanes will likely be invaded by nonnative plants as nonnative plants are present in all ecosystems throughout the Hawaiian Islands and competition with nonnative plants is exacerbated by hurricanes. Therefore, hurricanes represent a threat to each of the 10 ecosystems and to all of the 37 plant species addressed in this final rule. In addition, biologists have reported that hurricanes are a threat to the three tree snails in this final rule (*Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*). High winds and intense rains from hurricanes can dislodge snails from the leaves and branches of their host plants and deposit them on the forest floor where they may be crushed by falling vegetation or exposed to predation by nonnative rats and snails (see *Disease or Predation*, below) (Hadfield 2011, pers. comm.). Although there is historical evidence of only one hurricane that approached from the east and impacted the islands of Maui and Hawaii (Businger 1998, p. 3), damage by future hurricanes could further decrease the remaining native plant-dominated habitat areas that support the Maui Nui ecosystems (Bellingham *et al.* 2005, p. 681).

Habitat Destruction and Modification Due to Landslides, Rockfalls, Treefalls, Flooding, and Drought

Landslides, rockfalls, treefalls, and flooding destabilize substrates, damage and destroy individual plants, and alter hydrological patterns, which result in changes to native plant and animal communities. In the open sea near Hawaii, rainfall averages 25 to 30 in (635 to 762 mm) per year, yet the islands may receive up to 15 times this amount in some places, caused by orographic features (physical geography of mountains) (Wagner *et al.* 1999b; adapted from Price (1983) and Carlquist (1980)), pp. 38 and 39). During storms, rain may fall at 3 in (76 mm) per hour or more, and sometimes may reach nearly 40 in (1,000 mm) in 24 hours, causing destructive flash-flooding in streams and narrow gulches (Wagner *et al.* 1999b; adapted from Price (1983) and Carlquist (1980)), pp. 38–39). Due to the steep topography of much of the areas on Molokai, Lanai, and Maui where these 40 species remain, erosion and disturbance caused by introduced ungulates exacerbate the potential for landslides, rockfalls, or flooding, which in turn negatively impact native plants. For those species that occur in small numbers in highly restricted geographic areas, such events have the potential to eradicate all individuals of a population, or even all populations of a species, resulting in extinction.

Landslides, rockfalls, and treefalls likely adversely impact 14 of the species addressed in this proposed rule, including *Cyanea asplenifolia*, *C. grimesiana* ssp. *grimesiana*, *C. horrida*, *C. magnicalyx*, *C. maritae*, *C. mauiensis*, *C. munroi*, *C. profuga*, *C. solanacea*, *Cyrtandra filipes*, *Schiedea jacobii*, *S. laui*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*, as documented in observations by field botanists and surveyors (HBMP 2008). Monitoring data from PEPP and the HBMP suggest that these 14 species face threats from landslides or falling rocks, as they are found in landscape settings susceptible to these events (e.g., steep slopes and cliffs). Field survey data presented by Oppenheimer documented the direct damage from landslides to individuals of *Cyanea solanacea* located along a stream bank and steep slope beneath a cliff (PEPP 2007, p. 41). Since *C. solanacea* is known from a total of 26 individuals in steep-walled stream valleys, one or several landslides could lead to near extirpation of the species by direct destruction of the individual plants, mechanical damage to individual plants that could lead to their death, destabilization of the cliff

habitat leading to additional landslides, and alteration of hydrological patterns (e.g., affecting the availability of soil moisture). In addition, Perlman (2009b, in litt.) noted the threat of rolling or falling rocks to one population of *Cyanea magnilyx*.

Monitoring data presented by HBMP and the PEPP program suggest that flooding is a likely threat to five plant species included in this final rule, *Bidens campylotheca* ssp. *waihoiensis*, *Cyanea duvalliorum*, *C. horrida*, *C. profuga*, and *Schiedea laui*. Field survey data presented by PEPP (2008, pp. 107–108) and by Bakutis (2010, in litt.) suggest that catastrophic flooding or landslides are possible at one population of *Schiedea laui* located in a cave along a narrow stream corridor at the base of a waterfall in the Kamakou Preserve.

Six plant species, *Canavalia pubescens*, *Cyanea horrida*, *Festuca molokaiensis*, *Schiedea jacobii*, *S. salicaria*, and *Stenogyne kauauiensis*, and the three tree snails in this rule may be affected by habitat loss or degradation associated with droughts, which are not uncommon in the Hawaiian Islands. Between 1860 and 2006, there have been 30 periods of Statewide drought that have also affected the islands of Molokai, Lanai, and Maui (Giambelluca *et al.* 1991, pp. 3–4; Hawaii Commission on Water Resource Management 2009a and 2009b). In 2006, Maui County was designated a primary disaster area because of a severe drought from April to September 2006 (Pacific Disaster Center, 2010). More recently, the U.S. Department of Agriculture has designated Maui County as a primary natural disaster area due to losses caused by an ongoing drought, beginning January 1, 2012 (<http://www.fsa.usda.gov/FSA>, accessed January 17, 2013). It is suggested that *Festuca molokaiensis*, a purported annual plant, has not been observed at its known location in recent years due to drought conditions on Molokai (Oppenheimer 2011, pers. comm.). Drought also leads to an increase in the number of forest and brush fires (Giambelluca *et al.* 1991, p. v), causing a reduction of native plant cover and habitat (D'Antonio and Vitousek 1992, pp. 77–79) and a reduction in availability of host plants for the three tree snails. Recent episodes of drought have also driven axis deer farther into urban and forested areas for food, increasing their negative impacts to native vegetation from herbivory and trampling (see *Disease or Predation*, below) (Waring 1996, in litt., p. 5; Nishibayashi 2001, in litt.).

#### Habitat Destruction and Modification by Climate Change

Our analyses under the Endangered Species 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.

Climate change will be a particular challenge for the conservation of biodiversity because the introduction and interaction of additional stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). The magnitude and intensity of the impacts of global climate change and increasing temperatures on native Hawaiian ecosystems are unknown. Currently, there are no climate change studies that specifically address impacts to the 10 Maui Nui ecosystems described in this final rule, or the 40 species at issue in this rule. Based on the best available information, climate change impacts could lead to the decline or loss of native species that comprise the communities in which the 40 species occur (Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248; Allen *et al.* 2010, pp. 660–662; Sturrock *et al.* 2011, p. 144; Towsend *et al.* 2011, p. 15; Warren 2011, pp. 221–226). In addition, weather regime changes (e.g., droughts, floods) will likely result from increased annual average temperatures

related to more frequent El Niño episodes in Hawaii (Giambelluca *et al.* 1991, p. v). Future changes in precipitation and the forecast of those changes are highly uncertain because they depend, in part, on how the El Niño-La Niña weather cycle (a disruption of the ocean atmospheric system in the tropical Pacific having important global consequences for weather and climate) might change (State of Hawaii 1998, pp. 2–10). The 40 species in this final rule may be especially vulnerable to extinction due to anticipated environmental changes that may result from global climate change, due to their small population size and highly restricted ranges. Environmental changes that may affect these species are expected to include habitat loss or alteration and changes in disturbance regimes (e.g., storms and hurricanes). The probability of a species going extinct as a result of these factors increases when its range is restricted, habitat decreases, and population numbers decline (IPCC 2007, p. 8). The 40 species have limited environmental tolerances, limited ranges, restricted habitat requirements, small population sizes, and low numbers of individuals. Therefore, we would expect these species to be particularly vulnerable to projected environmental impacts that may result from changes in climate, and subsequent impacts to their habitats (e.g., Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248). We believe changes in environmental conditions that may result from climate change may impact these 40 species and their habitat, and we do not anticipate a reduction in this potential threat in the near future.

#### Climate Change and Ambient Temperature

The average ambient air temperature (at sea level) is projected to increase by about 4.1 degrees Fahrenheit (°F) (2.3 °C) with a range of 2.7 °F to 6.7 °F (1.5 °C to 3.7 °C) by 2100 worldwide (IPCC 2007). These changes would increase the monthly average temperature of the Hawaiian Islands from the current value of 74 °F (23.3 °C) to between 77 °F to 86 °F (25 °C to 30 °C). Historically, temperature has been rising over the last 100 years with the greatest increase after 1975 (Alexander *et al.* 2006, pp. 1–22; Giambelluca *et al.* 2008, p. 1). The rate of increase at low elevation (0.16 °F; 0.09 °C) per decade is below the observed global temperature rise of 0.32 °F (0.18 °C) per decade (IPCC 2007). However, at high elevations, the rate of increase (0.48 °F

(0.27 °C) per decade) greatly exceeds the global rate (IPCC 2007).

Overall, the daily temperature range in Hawaii is decreasing, resulting in a warmer environment, especially at higher elevations and at night. In the main Hawaiian Islands, predicted changes associated with increases in temperature include a shift in vegetation zones upslope, shift in animal species' ranges, changes in mean precipitation with unpredictable effects on local environments, increased occurrence of drought cycles, and increases in the intensity and number of hurricanes (Loope and Giambelluca 1998, pp. 514–515; U.S. Global Change Research Program (US–GCRP) 2009). In addition, weather regime changes (e.g., droughts, floods) will likely result from increased annual average temperatures related to more frequent El Niño episodes in Hawaii (Giambelluca *et al.* 1991, p. v). However, despite considerable progress made by expert scientists toward understanding the impacts of climate change on many of the processes that contribute to El Niño variability, it is not possible to say whether or not El Niño activity will be affected by climate change (Collins *et al.* 2010, p. 391).

The warming atmosphere is creating a plethora of anticipated and unanticipated environmental changes such as melting ice caps, decline in annual snow mass, sea-level rise, ocean acidification, increase in storm frequency and intensity (e.g., hurricanes, cyclones, and tornadoes), and altered precipitation patterns that contribute to regional increases in floods, heat waves, drought, and wildfires that also displace species and alter or destroy natural ecosystems (Pounds *et al.* 1999, pp. 611–612; IPCC 2007; Marshall *et al.* 2008, p. 273; U.S. Climate Change Science Program 2008; Flannigan *et al.* 2009, p. 483; US–GCRP 2009; Allen *et al.* 2010, pp. 660–662; Warren 2011, pp. 221–226). These environmental changes are predicted to alter species migration patterns, lifecycles, and ecosystem processes such as nutrient cycles, water availability, and decomposition (IPCC 2007; Pounds *et al.* 1999, pp. 611–612; Sturrock *et al.* 2011, p. 144; Townsend *et al.* 2011, p. 15; Warren 2011, pp. 221–226). The species extinction rate is predicted to increase congruent with ambient temperature increase (US–GCRP 2009).

#### Climate Change and Precipitation

As global surface temperature rises, the evaporation of water vapor increases, resulting in higher concentrations of water vapor in the atmosphere, further resulting in altered

global precipitation patterns (U.S. National Science and Technology Council (US–NSTC) 2008; US–GCRP 2009). While annual global precipitation has increased over the last 100 years, the combined effect of increases in evaporation and evapotranspiration is causing land surface drying in some regions leading to a greater incidence and severity of drought (US–NSTC 2008; US–GCRP 2009). Over the the past 100 years, the Hawaiian Islands have experienced an overall decline in annual precipitation of just over 9 percent (US–NSTC 2008). Other data on precipitation in Hawaii, which includes sea level precipitation and the added orographic effects, show a steady and significant decline of about 15 percent over the last 15 to 20 years (Chu and Chen 2005, p. 4,881–4,900; Diaz *et al.* 2005, pp. 1–3). Exact future changes in precipitation in Hawaii and the forecast of those changes are uncertain because they depend, in part, on how the El Niño-La Niña weather cycle might change (State of Hawaii 1998, pp. 2–10).

In the oceans around Hawaii, the average annual rainfall at sea level is about 25 in (63.5 cm). The orographic features of the islands increase this annual average to about 70 in (177.8 cm) but can exceed 240 in (609.6 cm) in the wettest mountain areas. Rainfall is distributed unevenly across each high island, and rainfall gradients are extreme (approximately 25 in (63.5 cm) per mile), creating both very dry and very wet areas. Global climate modeling predicts that, by 2100, net precipitation at sea level near the Hawaiian Islands will decrease in winter by about 4 to 6 percent, with no significant change during summer (IPCC 2007). Downscaling of global climate models indicates that wet-season (winter) precipitation will decrease by 5 percent to 10 percent, while dry-season (summer) precipitation will increase by about 5 percent (Timm and Diaz 2009, pp. 4,261–4,280). These data are also supported by a steady decline in stream flow beginning in the early 1940s (Oki 2004, p. 1). Altered seasonal moisture regimes can have negative impacts on plant growth cycles and overall negative impacts on natural ecosystems (US–GCRP 2009). Long periods of decline in annual precipitation result in a reduction in moisture availability, an increase in drought frequency and intensity, and a self-perpetuating cycle of nonnative plants (such as nonnative grasses adapted to fire), fire, and erosion (US–GCRP 2009; Warren 2011, pp. 221–226) (see “Habitat Destruction and Modification by Fire,” above). These impacts may negatively affect the 40

species in this final rule and the 10 ecosystems that support them.

#### Climate Change, and Tropical Cyclone Frequency and Intensity

A tropical cyclone is the generic term for a medium- to large-scale low-pressure system over tropical or subtropical waters with organized convection (i.e., thunderstorm activity) and definite cyclonic surface wind circulation (counterclockwise direction in the Northern Hemisphere) (Holland 1993, pp. 1–8). In the Northeast Pacific Ocean, east of the International Date Line, once a tropical cyclone reaches an intensity with winds of at least 74 mi per hour (33 m per second) it is considered a hurricane (Neumann 1993, pp. 1–2). Climate modeling has projected changes in tropical cyclone frequency and intensity due to global warming over the next 100 to 200 years (Vecchi and Soden 2007, pp. 1,068–1,069, Figures 2 and 3; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1,371, Figure 14). The frequency of hurricanes generated by tropical cyclones is projected to decrease in the central Pacific (e.g., the main and Northwestern Hawaiian Islands) while storm intensity (strength) is projected to increase by a few percent over this period (Vecchi and Soden 2007, pp. 1,068–1,069, Figures 2 and 3; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1,371, Figure 14). There are no climate model predictions for a change in the duration of Pacific tropical cyclone storm season (which generally runs from May through November).

In general, tropical cyclones with the intensities of hurricanes have been a rare occurrence in the Hawaiian Islands. For more information on this topic, see “Habitat Destruction and Modification by Hurricanes,” above.

#### Climate Change, and Sea Level Rise and Coastal Inundation

On a global scale, sea level is rising as a result of thermal expansion of warming ocean water; the melting of ice sheets, glaciers, and ice caps; and the addition of water from terrestrial systems (Climate Institute 2011). Sea level rose at an average rate of 0.1 in (1.8 mm) per year between 1961 and 2003 (IPCC 2007, p. 5), and the predicted increase by the end of this century, without accounting for ice sheet flow, ranges from 0.6 ft to 2.0 ft (0.18 m to 0.6 m) (IPCC 2007, p. 13). When ice sheet and glacial melt are incorporated into models, the average estimated increase in sea level by the year 2100 is approximately 3 to 4 ft (0.9 to 1.2 m), with some estimates as high as 6.6 ft (2.0 m) to 7.8 ft (2.4 m) (Rahmstorf 2007,

pp. 368–370; Pfeffer *et al.* 2008, p. 1,340; Fletcher 2009, p. 7; US–GCRP 2009, p. 18). There is no specific information available on how sea level rise and coastal inundation will impact the coastal ecosystems on Maui and Molokai where two of the species in this rule, *Canavalia pubescens* and *Pittosporum halophilum*, are currently found.

Increased interannual variability of ambient temperature, precipitation, hurricanes, and sea level rise and inundation would provide additional stresses on the 10 ecosystems and each of the associated 40 species in this final rule because they are highly vulnerable to disturbance and related invasion of nonnative species. The probability of a species going extinct as a result of such factors increases when its range is restricted, habitat decreases, and population numbers decline (IPCC 2007, p. 8). The 40 species have limited environmental tolerances, ranges, restricted habitat requirements, small population sizes, and low numbers of individuals. Therefore, we would expect these species to be particularly vulnerable to projected environmental impacts that may result from changes in climate and subsequent impacts to their habitats (e.g., Loope and Giambelluca 1998, pp. 504–505; Pounds *et al.* 1999, pp. 611–612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246–14,248, Giambelluca and Luke 2007, pp. 13–18). Based on the above information, we conclude that changes in environmental conditions that result from climate change are likely to negatively impact these 40 species, and we do not anticipate a reduction in this potential threat in the near future.

#### Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

There are no approved habitat conservation plans (HCPs), safe harbor agreements (SHAs), or candidate conservation agreements (CCAs) that specifically address these 40 species and threats from habitat destruction or modification. We are aware of several memoranda of understanding (MOUs) that are under development that will specifically address one or more of these 40 species and the threats from habitat destruction or modification. We acknowledge that in the State of Hawaii there are several voluntary conservation efforts that may be helping to ameliorate the threats to the 40 species addressed in this final rule due to habitat destruction and modification by nonnative species, fire, natural disasters, and climate change, and the interaction of these threats. However,

these efforts are overwhelmed by the number of threats, the extent of these threats across the landscape, and the lack of sufficient resources (e.g., funding) to control or eradicate them from all areas where these 40 species occur now or occurred historically. Some of the voluntary conservation efforts include the 11 island-based watershed partnerships, including the 4 partnerships in Maui Nui (West Maui Mountains Watershed Partnership, East Maui Watershed Partnership, East Molokai Watershed Partnership, and Lanai Forest and Watershed Partnership). These partnerships are voluntary alliances of public and private landowners “committed to the common value of protecting forested watersheds for water recharge, conservation, and other ecosystem services through collaborative management” (<http://hawp.org/partnerships>). Most of the ongoing conservation management actions undertaken by the watershed partnerships address threats to upland habitat from nonnative species (e.g., feral ungulates, nonnative plants) and may include fencing, ungulate removal, nonnative plant control, and outplanting of native, as well as rare native, species on lands within the partnership. Funding for the watershed partnerships is provided through a variety of State and Federal sources, public and private grants, and in-kind services provided by the partners or volunteers.

The State of Hawaii’s Plant Extinction Prevention (PEP) Program supports conservation of plant species by securing seeds or cuttings (with permission from the State, Federal, or private landowners) from the rarest and most critically endangered native species for propagation and outplanting (<http://pepphi.org>). The PEP Program focusses on species that have fewer than 50 plants remaining in the wild. Funding for this program is from the State of Hawaii, Federal agencies (e.g., Service), and public and private grants. The PEP Program collects, propagates, or outplants 14 plant species that are addressed in this final rule (*Cyanea asplenifolia*, *C. horrida*, *C. magnicalyx*, *C. maritae*, *C. munroi*, *C. profuga*, *C. solanacea*, *Phyllostegia haliakalae*, *P. pilosa*, *Pittosporum halophilum*, *Schiedea jacobii*, *S. laui*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*) PEPP 2011, pp. 75, 166, 191; PEPP 2012, pp. 6, 13, 34–36, 66–70, 73–81, 150, 159–160). However, the program has not yet been able to directly address broad-scale habitat threats to plants by invasive species.

The State’s University of Hawaii receives funding from the Service and

other sources to propagate and maintain in captivity the two Lanai tree snails, *Partulina semicarinata* and *P. variabilis*, and Newcomb’s tree snail (*Newcombia cumingi*). However, the numbers of individuals of both Lanai tree snail species appear to be declining in captivity, and individuals of Newcomb’s tree snail do not survive long in captivity (Hadfield 2008, p. 1–11; Hadfield 2010, pers. comm.; Hadfield 2011, pers. comm.). This program does not address broad-scale threats to tree snail habitat by invasive species. Recently (August 2012), the Service and Maui Land and Pineapple Co., Inc. (MLP), entered into a cooperative agreement to provide funding for the construction of a fenced snail enclosure at the only known site for Newcomb’s tree snail (Service 2012, in litt.). The purpose of the fenced enclosure is to protect individuals of this tree snail *in-situ* from predation by rodents (e.g., rats and mice) and predatory nonnative snails. In addition, restoration of snail habitat will be undertaken as funding is available. Construction of the fenced enclosure has not yet been initiated.

Voluntary conservation actions undertaken by The Nature Conservancy of Hawaii (TNC) on their preserves on Maui (Kapunakea Preserve and Waikamoi Preserve), and two of their preserves on Molokai (Kamakou Preserve and Moomomi Preserve), by the Maui Land and Pineapple Company on their Puu Kukui Watershed Preserve on west Maui, by Ulupalakua Ranch and Haleakala Ranch on their lands on Maui, and by East Maui Irrigation Company, Ltd., are described in our June 11, 2012, proposed rule (77 FR 34464). These conservation actions provide a conservation benefit and ameliorate some of the threats from nonnative species to one or more of the 36 plants (not *Cyanea mauiensis*) and 3 tree snails addressed in this final rule.

In addition, other private landowners on Maui are engaged in, or initiating, voluntary conservation actions on their lands, including fencing to exclude ungulates, removing ungulates, controlling nonnative plants, and outplanting native and rare plants. These private landowners include Kaanapali Land Development Company (in cooperation with TNC), Nuu Mauka Ranch, Kaupo Ranch, Makila Land Company, Kahoma Land Company, and Wailuku Water Company. All of these landowners are partners in one of the watershed partnerships on Maui, or cooperate or work collaboratively with watershed partners. The conservation actions provided by these landowners ameliorate some of the threats from nonnative species to one or more of the

36 plants (not *Cyanea mauiensis*) and 3 tree snails addressed in this final rule.

In addition to the the voluntary conservation efforts of TNC on Molokai (see above), we are aware of voluntary conservation efforts by Puu o Hoku Ranch associated with the safe harbor agreement (SHA) for the nene or Hawaiian goose (*Branta sandvicensis*). Although the SHA does not provide specific management actions for the conservation of one or more of the 11 species on Molokai addressed in this final rule, some habitat conservation measures (e.g., enhancement of native plant species) that may be undertaken by the ranch may benefit these species and their habitat.

Recently, the private landowners of the island of Lanai (Lanai Resorts and Castle & Cooke Properties, Inc. (CCPI)) began development of an island-wide conservation plan. This plan, when completed and implemented, should provide landscape-scale management that will benefit the unique native species and their habitats on the entire island of Lanai. The plan should help ameliorate the primary threats to, and needed recovery actions for, the seven species (five plants and two tree snails) addressed in this final rule and Lanai's already listed species and their habitat, including: Control of nonnative species (including ungulates), in-situ protection of tree snails, implementation of immediate protective intervention efforts for rare plants, and restoration of terrestrial habitat for plants and animals.

#### Summary of Habitat Destruction and Modification

The threats to the habitats of each of the 40 species in this final rule are occurring throughout the entire range of each of the species. These threats include land conversion by agriculture and urbanization, nonnative ungulates and plants, fire, natural disasters, and climate change, and the interaction of these threats. While the conservation measures described above are a step in the right direction toward addressing the threats to the 40 species, due to the pervasive and expansive nature of the threats resulting in habitat degradation, these measures are insufficient across the landscape to eliminate these threats to any of the 40 species in this final rule.

Development and urbanization of coastal and lowland dry habitat on Maui represents a serious and ongoing threat to the remaining individuals of *Canavalia pubescens* remaining at Palauea-Keahou.

The effects from ungulates are ongoing because ungulates currently

occur in the 10 ecosystems that support the 40 species in this rule. The threat posed by introduced ungulates to the species and their habitats in this final rule that occur in these 10 ecosystems (see Table 4) is serious, because they cause: (1) Trampling and grazing that directly impact the plant communities, which include 35 of the 37 plant species listed in this final rule, and impact host plants used by the two Lanai tree snails, *Partulina semicarinata* and *P. variabilis*, for foraging, shelter, and reproduction; (2) increased soil disturbance, leading to mechanical damage to individuals of the plant species listed in this final rule, and plants used by the two tree snails for foraging, shelter, and reproduction; and (3) creation of open, disturbed areas conducive to weedy plant invasion and establishment of alien plants from dispersed fruits and seeds, which results over time in the conversion of a community dominated by native vegetation to one dominated by nonnative vegetation (leading to all of the negative impacts associated with nonnative plants, listed below). These threats are expected to continue or increase without ungulate control or eradication.

Nonnative plants represent a serious and ongoing threat to 36 of the 40 species listed in this final rule (35 plant species and the tree snail *Newcombia cumingi*; see Table 4) through habitat destruction and modification because they: (1) Adversely impact microhabitat by modifying the availability of light; (2) alter soil-water regimes; (3) modify nutrient cycling processes; (4) alter fire characteristics of native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat; and (5) outcompete, and possibly directly inhibit the growth of, native plant species. Each of these threats can convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–35). This conversion has negative impacts on 35 of the 37 plant species addressed here, as well as the native plant species upon which *Newcombia cumingi* depends for essential life-history needs.

The threat from fire to 13 of the 40 species in this final rule that depend on coastal, lowland dry, lowland mesic, montane dry, montane mesic, and dry cliff ecosystems (*Bidens campylotheca* ssp. *pentamera*, *Canavalia pubescens*, *Cyanea magnicalyx*, *C. mauiensis*, *C. obtusa*, *Festuca molokaiensis*, *Phyllostegia bracteata*, *P. haliakalae*, *Pittosporum halophilum*, *Pleomele fernaldii*, *Santalum haleakalae* var. *lanaiensis*, *Schiedea salicaria*, and *Stenogyne kauaulaensis*; see Table 4) is

serious and ongoing because fire damages and destroys native vegetation, including dormant seeds, seedlings, and juvenile and adult plants. Many nonnative invasive plants, particularly fire-tolerant grasses, outcompete native plants and inhibit their regeneration (D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison *et al.* 2002, p. 122). Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimatic conditions and creating conditions favorable to alien plants. The threat from fire is unpredictable but increasing in frequency in ecosystems that have been invaded by nonnative, fire-prone grasses.

Natural disasters, such as hurricanes, represent a serious threat to the habitats of all 37 plant species addressed in this final rule because they open the forest canopy, modify available light, and create disturbed areas that are conducive to invasion by nonnative pest plants (Asner and Goldstein 1997, p. 148; Harrington *et al.* 1997, pp. 346–347). The discussion under "Habitat Destruction and Modification by Nonnative Plants," above provides additional information related to canopy gaps, light availability, and the establishment of nonnative plant species. In addition, hurricanes can negatively impact the three tree snail species in this final rule because strong winds and intense rainfall can dislodge individual snails from their host plants and deposit them on the ground where they may be crushed by falling debris or eaten by nonnative rats and snails. The impacts of hurricanes and other stochastic natural events can be particularly devastating to the 40 species because, as a result of other threats, they now persist in low numbers or occur in restricted ranges and are therefore less resilient to such disturbances, rendering them highly vulnerable. Furthermore, a particularly destructive hurricane holds the potential of driving a localized endemic species to extinction in a single event. Hurricanes pose an ongoing and ever-present threat because they can happen at any time, although their occurrence is not predictable.

Landslides, rockfalls, treefalls, and flooding adversely impact the habitats of 16 of the species in this final rule (*Bidens campylotheca* ssp. *waihoiensis*, *Cyanea asplenifolia*, *C. duvalliorum*, *C. grimesiana* ssp. *grimesiana*, *C. horrida*, *C. magnicalyx*, *C. maritae*, *C. mauiensis*, *C. munroi*, *C. profuga*, *C. solanacea*, *Cyrtandra filipes*, *Schiedea jacobii*, *S. laui*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*; see Table 4) by

destabilizing substrates, damaging and destroying individual plants, and altering hydrological patterns, which result in habitat destruction or modification and changes to native plant and animal communities. Drought is a threat to six plant species—*Canavalia pubescens*, *Cyanea horrida*, *Festuca molokaiensis*, *Schiedea jacobii*, *S. salicaria*, and *Stenogyne kauaulaensis*—and all three tree snails—*Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*—by the loss or degradation of habitat due to death of individual native plants and host tree species, as well as an increase in forest and brush fires. These threats are serious and have the potential to occur at any time, although their occurrence is not predictable.

Changes in environmental conditions that may result from global climate change include increasing temperatures, decreasing precipitation, increasing storm intensities, and sea level rise and coastal inundation. The consequent impacts on the 40 species addressed in this final rule are related to changes in microclimatic conditions in their habitats. These changes may lead to the loss of native species due to direct physiological stress, the loss or alteration of habitat, increased competition from nonnative species, and changes in disturbance regimes (e.g., droughts, fire, storms, and hurricanes). Because the specific and cumulative effects of climate change on these 40 species are presently unknown, we are not able to determine the severity of this possible threat with confidence.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

##### Plants

We are not aware of any threats to the 37 plant species addressed in this final rule that are attributable to overutilization for commercial, recreational, scientific, or educational purposes.

##### Tree Snails

Tree snails can be found around the world in tropical and subtropical regions and have been valued as collectibles for centuries. Evidence of tree snail trading among prehistoric Polynesians was discovered by a genetic characterization of the enigmatic multi-archipelagic distribution of the Tahitian endemic *Partula hyalina* and related taxa (Lee *et al.* 2007, pp. 2,907, 2,910). In their study, Lee *et al.* (2007, pp. 2,908–2,910) found evidence that *Partula hyalina* had been traded as far away as Mangaia in the Southern Cook

Islands, a distance of over 500 mi (805 km). The endemic Hawaiian tree snails within the family Achatinellidae (subfamily Achatinellinae) were extensively collected for scientific as well as recreational purposes by Europeans in the 18th to early 20th centuries (Hadfield 1986, p. 322). During the 1800s, collectors observed 500 to 2,000 snails per tree, and sometimes collected over 4,000 snails in just several hours (Hadfield 1986, p. 322). We may infer that the repeated collections of hundreds to thousands of individuals at a time by early collectors resulted in decreased population sizes and reduction of reproduction potential due to the removal of potential breeding adults. The Achatinellinae do not reach reproductive age until nearly 10 years old, after which they produce only 4 to 6 offspring per year (Hadfield 2011, pers. comm.). The allure of tree snails persists to this day, and there is a market for rare tree snails that may serve as an incentive to collect them. A search of the Internet (e.g., *eBay.com*, *google.com*) reveals Web sites that offer Hawaiian tree snail shells for sale, including other species of the endemic Hawaiian tree snail genus *Partulina*. Based on the history of collection of endemic Hawaiian tree snails, the market for Hawaiian tree snail shells, and the vulnerability of the small populations of *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis* to the negative impacts of any collection, we consider the potential overcollection of these three Hawaiian tree snails to pose a serious and ongoing threat, because it can occur at any time, although its occurrence is not predictable.

#### Conservation Efforts to Reduce Overutilization for Commercial, Recreational, Scientific or Educational Purposes

We are unaware of voluntary conservation efforts to reduce overcollection of the three Hawaiian tree snails. There are no approved HCPs, SHAs, or MOUs, or other voluntary actions that specifically address these three species and the threat from overcollection.

#### Summary of Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no evidence to suggest that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to any the 37 plant species in this final rule. We consider the three species of tree snails vulnerable to the impacts of overutilization due to collection for

trade or market. Based on the history of collection of endemic Hawaiian tree snails, the market for Hawaiian tree snail shells, and the inherent vulnerability of the small populations of *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis* to the removal of breeding adults, we consider collection to pose a serious and ongoing threat to these species.

#### C. Disease or Predation

##### Disease

We are not aware of any threats to the 37 plant species addressed in this final rule that would be attributable to disease. Disease is a potential threat to the three tree snails in this rule, *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*; evidence for this is based on attempts to raise these species in captivity. Due to the extremely low numbers and threat of extinction of Hawaiian tree snails in the wild, captive breeding of over 20 species has been implemented over the past decade. Hadfield (2010, pers. comm.) notes that individuals of *Newcombia cumingi* do not survive long in captivity, and individuals of *Partulina* spp. sometimes die off for unknown reasons (Hadfield 2011, pers. comm.). According to Hadfield (2011, pers. comm.), the London Zoo found evidence of protozoan presence in a non-Hawaiian species of *Partulina*, which is indicative of disease. Hadfield (2011, pers. comm.) also suggests there is a negative correlation between reproductive potential in Hawaiian tree snails and time in captivity, likely due to inbreeding depression or environmental conditions, including disease.

Because we have no evidence that disease may be impacting natural populations of the three tree snail species, we cannot conclude that this threat may have contributed to the current population status of *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*. However, we note that disease is a potential threat to captive bred Hawaiian tree snails and may be of particular concern for *Newcombia cumingi*, which is not successfully surviving or reproducing in captivity, potentially due to disease, and is only known from one individual in one location in the wild. Recovery of this species will likely depend on successful captive propagation and eventual translocation to protected sites in the wild.

##### Predation and Herbivory

Hawaii's plants and animals evolved in nearly complete isolation from

continental influences. Successful colonization of these remote volcanic islands was infrequent, and many organisms never succeeded in establishing populations. As an example, Hawaii lacks any native ants or conifers, has very few families of birds, and has only a single extant native land mammal, a bat (Loope 1998, p. 748). In the absence of any grazing or browsing mammals, plants that became established did not need mechanical or chemical defenses against mammalian herbivory such as thorns, prickles, and production of toxins. As the evolutionary pressure to either produce or maintain such defenses was lacking, Hawaiian plants either lost or never developed these adaptations (Carlquist 1980, p. 173). Likewise native Hawaiian birds and insects experienced no evolutionary pressure to develop anti-predator mechanisms against mammals or invertebrates that were not historically present on the island. The native flora and fauna of the islands are thus particularly vulnerable to the impacts of introduced nonnative species, as discussed below.

#### Introduced Ungulates

In addition to the habitat impacts discussed above (see “Habitat Destruction and Modification by Introduced Ungulates” under Factor A), introduced ungulates pose a threat to the following 35 of the 37 plant species in this final rule by trampling and eating individual plants (this information is also presented in Table 4): *Bidens campylothea* ssp. *pentamera* (pigs, goats, and axis deer), *B. campylothea* ssp. *waihoiensis* (pigs, goats, and axis deer), *B. conjuncta* (pigs and goats), *Calamagrostis hillebrandii* (pigs), *Canavalia pubescens* (pigs, goats, cattle, and axis deer), *Cyanea asplenifolia* (pigs, goats, cattle, and axis deer), *C. duvalliorum* (pigs), *C. grimesiana* ssp. *grimesiana* (pigs, goats, and axis deer), *C. horrida* (pigs), *C. kunthiana* (pigs), *C. magnicalyx* (pigs), *C. maritae* (pigs), *C. mauiensis* (pigs), *C. munroi* (goats and axis deer), *C. obtusa* (pigs, goats, cattle, and axis deer), *C. profuga* (pigs and goats), *C. solanacea* (pigs and goats), *Cyrtandra ferripilosa* (pigs and goats), *C. filipes* (pigs, goats, and axis deer), *C. oxybapha* (pigs, goats, and cattle), *Festuca molokaiensis* (goats), *Geranium hanaense* (pigs), *G. hillebrandii* (pigs), *Mucuna sloanei* var. *persericea* (pigs and cattle), *Myrsine vaccinioides* (pigs), *Peperomia subpetiolata* (pigs), *Phyllostegia bracteata* (pigs and cattle), *P. haliakalae* (cattle), *P. pilosa* (pigs and goats), *Pittosporum halophilum* (pigs), *Pleomele fernaldii* (axis deer and mouflon), *Santalum haleakalae* var.

*lanaiense* (pigs, goats, axis deer, and mouflon), *Schiedea jacobii* (goats, cattle, and axis deer), *S. salicaria* (goats, cattle, and axis deer), and *Wikstroemia villosa* (pigs).

We have direct evidence of ungulate damage to some of these species, but for many, due to their remote locations or lack of study, ungulate damage is presumed based on the known presence of these introduced ungulates in the areas where these species occur and the results of studies conducted in Hawaii and elsewhere (Diong 1982, p. 160). For example, in a study conducted by Diong (1982, p. 160) on Maui, feral pigs were observed browsing on young shoots, leaves, and fronds of a wide variety of plants, of which over 75 percent were endemic species. A stomach content analysis in this study showed that 60 percent of the pigs' food source consisted of the endemic *Cibotium* (hapuu, tree fern). Pigs were observed to fell plants and remove the bark from native plant species within the genera *Cibotium*, *Clermontia*, *Coprosma*, *Hedyotis*, *Psychotria*, and *Scaevola*, resulting in larger trees being killed over a few months of repeated feeding (Diong 1982, p. 144). Beach (1997, pp. 3–4) found that feral pigs in Texas spread disease and parasites, and their rooting and wallowing behavior led to spoilage of watering holes and loss of soil through leaching and erosion. Rooting activities also decreased the survivability of some plant species through disruption at root level of mature plants and seedlings (Beach 1997, pp. 3–4; Anderson *et al.* 2007, pp. 2–3). In Hawaii, pigs dig up forest ground cover consisting of delicate and rare species of orchids, ferns, mints, lobeliads, and other taxa, including roots, tubers, and rhizomes (Stone and Anderson 1988, p. 137). In addition, there are direct observations of pig herbivory on four of the plant species in this final rule, including *Cyanea magnicalyx* (PEPP 2010, p. 49), *C. maritae* (PEPP 2010, p. 50), *Peperomia subpetiolata* (PEPP 2010, p. 97), and *Phyllostegia pilosa* (PEPP 2009, p. 93). As pigs occur in 10 ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, subalpine, dry cliff, and wet cliff) on Molokai and Maui, the results of the studies described above suggest that pigs can also alter these ecosystems and directly damage or destroy native plants by their browsing activity.

Feral goats thrive on a variety of food plants, and are instrumental in the decline of native vegetation in many areas (Cuddihy and Stone 1990, p. 64). Feral goats trample roots and seedlings,

cause erosion, and promote the invasion of alien plants. They are able to forage in extremely rugged terrain and have a high reproductive capacity (Clarke and Cuddihy 1980, p. C–20; van Riper and van Riper 1982, pp. 34–35; Tomich 1986, pp. 153–156; Cuddihy and Stone 1990, p. 64). Goats were observed to browse on native plant species in the following genera: *Argyroxiphium*, *Canavalia*, *Plantago*, *Schiedea*, and *Stenogyne* (Cuddihy and Stone 1990, p. 64). A study on the island of Hawaii demonstrated that *Acacia koa* seedlings are unable to survive due to browsing and grazing by goats (Spatz and Mueller-Dombois 1973, p. 874). If goats are present at high numbers, mature trees will eventually die, and with them the root systems that support suckers and vegetative reproduction. One study demonstrated a positive height-growth response of *Acacia koa* suckers to the 3-year exclusion of goats (1968–1971) inside a fenced area, whereas suckers were similarly abundant, but very small, outside of the fenced area (Spatz and Mueller-Dombois 1973, p. 873). Another study at Puuwaawaa on the island of Hawaii demonstrated that prior to management actions in 1985, regeneration of endemic shrubs and trees in the goat-grazed area was almost totally lacking, contributing to the invasion of the forest understory by exotic grasses and weeds. After the removal of grazing animals in 1985, *A. koa* and *Metrosideros* spp. seedlings were observed germinating by the thousands (HDLNR 2002, p. 52). Based on a comparison of fenced and unfenced areas, it is clear that goats can devastate native ecosystems (Loope *et al.* 1988, p. 277). As goats occur in nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff), on Molokai, Lanai, and Maui, the results of the studies described above suggest that goats can also alter these ecosystems and directly damage or destroy native plants by their browsing activity. Therefore, goats pose a threat of predation to 18 species in this rule, as delineated in Table 4.

Axis deer were introduced to Molokai in 1868, Lanai in 1920, and Maui in 1959. Most of the available information on axis deer in the Hawaiian Islands concerns observations and reports from the island of Maui. On Maui, axis deer were introduced as a game animal, but their numbers have steadily increased, especially in recent years on Haleakala (Luna 2003, p. 44). During the 4-year El Niño drought from 1998 through 2001, Maui experienced an 80 to 90 percent

decline in shrub and vine species caused by deer browsing and girdling of young saplings. High mortality of rare and native plant species was observed (Medeiros 2010, pers. comm.). Axis deer consume progressively less palatable plants until no edible vegetation is left (Hess 2008, p. 3). Axis deer are highly adaptable to changing conditions, and are characterized as “plastic” (meaning flexible in their behavior) by Ables (1977, cited in Anderson in litt. 1999, p. 5). They exhibit a high degree of opportunism regarding their choice of forage (Dinerstein 1987, cited in Anderson 1999, p. 5) and can be found in all but the highest elevation ecosystems (subalpine and alpine) and montane bogs, according to Medeiros (2010, pers. comm.).

Axis deer on Maui follow a cycle of grazing and browsing in open lowland grasslands during the rainy season (November–March) and then migrate to the lava flows of montane mesic forests during the dry summer months to graze and browse native plants (Medeiros 2010, pers. comm.). Axis deer favor the native plants *Abutilon menziesii* (an endangered species), *Erythrina sandwicensis* (wiliwili), and *Sida fallax* (ilima) (Medeiros 2010, pers. comm.). During the driest months of summer (July–August), axis deer can be found along Maui’s coastal roads as they search for food. Hunting pressure appears to drive the deer into native forests, particularly the lower rainforests up to 4,000 to 5,000 ft (1,220 and 1,525 m) in elevation (Medeiros 2010, pers. comm.), and according to Kessler and Hess (2010, pers. comms.) axis deer can be found up to 9,000 ft (2,743 m) elevation.

Other native Hawaiian plant species have been reported as grazed and browsed by axis deer. For example, on Lanai, grazing by axis deer has been reported as a major threat to the endangered *Gardenia brighamii* (nau) (Mehrhoff 1993, p. 11), and on Molokai, browsing by axis deer has been reported on *Erythrina sandwicensis* and *Nototrichium sandwicense* (kului) (Medeiros *et al.* 1996, pp. 11, 19). Swedberg and Walker (1978, cited in Anderson 2003, pp. 124–125) reported that in the upper forests of Lanai, the native plants *Osteomeles anthyllidifolia* (uulei) and *Leptecophylla tameiameiaie* (pukiawe) comprised more than 30 percent of axis deer rumen volume. Other native plant species consumed by axis deer include *Abutilon menziesii* and *Geranium multiflorum* (nohoanu) (both endangered species); the species *Bidens campylotheca* ssp. *pentamera* and *B. campylotheca* ssp. *waihoiensis*, which are addressed in this final rule;

and *Achyranthes splendens* (NCN), *Chamaesyce lorifolia* (akoko), *Diospyros sandwicensis* (lama), *Lipochaeta rockii* var. *dissecta* (nehe), *Osmanthus sandwicensis* (ulupua), *Panicum torridum* (kakonakona), and *Santalum ellipticum* (laau ala) (Anderson 2002, poster; Perlman 2009c, in litt., pp. 4–5). As axis deer occur in nine of the described ecosystems on Molokai, Lanai, and Maui (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff), the results from the studies above, in addition to the direct observations from field biologists, suggest that axis deer can also alter these ecosystems and directly damage or destroy native plants by their browsing activity (see Table 4).

Mouflon sheep graze native vegetation, trample undergrowth, spread weeds, and cause erosion. On the island of Hawaii, mouflon browsing led to the decline in the largest population of the endangered *Argyroxiphium kauense* (kau silversword, Mauna Loa silversword, or ahinahina) located on the former Kahuku Ranch, reducing it from a “magnificent population of several thousand” (Degener *et al.* 1976, pp. 173–174) to fewer than 2,000 individuals (unpublished data in Powell 1992, in litt., p. 312) over a period of 10 years (1974–1984). The native tree *Sophora chrysophylla* is also a preferred browse species for mouflon. According to Scowcroft and Sakai (1983, p. 495), mouflon eat the shoots, leaves, flowers, and bark of this species. Bark stripping on the thin bark of a young tree is potentially lethal. Mouflon are also reported to strip bark from *Acacia koa* trees (Hess 2008, p. 3) and to seek out the threatened plant *Silene hawaiiensis* (Benitez *et al.* 2008, p. 57). In the Kahuku section of Hawaii Volcanoes National Park, mouflon sheep jumped the park boundary fence and reduced one population of *S. hawaiiensis* to half its original size over a 3-year period (Belfield and Pratt 2002, p. 8). Other native species browsed by mouflon include *Geranium cuneatum* ssp. *cuneatum* (hinahina, silver geranium), *G. cuneatum* ssp. *hypoleucum* (hinahina, silver geranium), and *Sanicula sandwicensis* (NCN) (Benitez *et al.* 2008, pp. 59, 61). On Lanai, mouflon sheep were once cited as one of the greatest threats to the endangered *Gardenia brighamii* (Mehrhoff 1993, p. 11), although fencing has now proven to be an effective mechanism against mouflon herbivory on this plant (Mehrhoff 1993, pp. 22–23). While mouflon sheep were introduced to the islands of Lanai and Hawaii as a

managed game species, a private game ranch on Maui has added mouflon to its stock and it is likely that over time some individuals may escape (Hess 2010, pers. comm.; Kessler 2010, pers. comm.). As mouflon occur in seven of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane wet, dry cliff, and wet cliff) on Lanai, the data from the studies above, in addition to direct observation of field biologists, suggest that mouflon can also alter these ecosystems and directly damage or destroy native plants by their browsing activity (see Table 4).

Cattle, either feral or domestic, are considered one of the most important factors in the destruction of Hawaiian forests (Baldwin and Fagerlund 1943, pp. 118–122). Captain George Vancouver of the British Royal Navy is attributed with introducing cattle to the Hawaiian Islands in 1793 (Fischer 2007, p. 350) by way of a gift to King Kamehameha I on the island of Hawaii. Over time, cattle became established on all of the main Hawaiian Islands, and historically feral cattle were found on the islands of Kauai, Oahu, Molokai, Maui, Kahoolawe, and Hawaii. Currently, feral cattle are found only on Maui and Hawaii, typically in accessible forests and certain coastal and lowland leeward habitats (Tomich 1986, pp. 140–144). In Hawaii Volcanoes National Park on the island of Hawaii, Cuddihy reported that there were twice as many native plant species as nonnatives found in areas that had been fenced to exclude feral cattle, whereas on the adjacent, nonfenced cattle ranch, there were twice as many nonnative plant species as natives (Cuddihy 1984, pp. 16, 34). Skolmen and Fujii (1980, pp. 301–310) found that *Acacia koa* seedlings were able to reestablish in a moist *Acacia koa*-*Metrosideros polymorpha* forest on Hawaii Island after the area was fenced to exclude feral cattle (Skolmen and Fujii 1980, pp. 301–310). Cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas conducive to invasion by nonnative plants, and spread seeds of nonnative plants in their feces and on their bodies. As feral cattle occur in five of the described ecosystems (lowland dry, lowland mesic, lowland wet, montane mesic, and montane wet) on Maui, the results from the above studies, in addition to the direct observations from field biologists, suggest that feral cattle can alter these ecosystems and directly damage or destroy native plants by their browsing activity (see Table 4).

The blackbuck antelope (*Antelope cervicapra*) is an endangered antelope from India brought to a private game reserve on Molokai about 10 years ago

from an Indian zoo (Kessler 2010, pers. comm.). According to Kessler (2010, pers. comm.), at some time in the last 10 years, a few individuals escaped from the game reserve and established a wild population of an unknown number of individuals on the lower, dry plains of western Molokai. Blackbuck primarily use grassland habitat for grazing. In India, foraging consumption and nutrient digestibility are high in the moist winter months and low in the dry summer months (Jhala 1997, pp. 1,348; 1,351). Although most plant species are grazed intensely when they are green, some are grazed only after they are dry (Jhala 1997, pp. 1,348; 1,351). While the habitat effects from the blackbuck antelope are unknown at this time, we consider these ungulates a potential threat to native plant species, including the 11 plant species in this final rule found on Molokai (Kessler 2010, pers. comm.), because blackbuck antelope have foraging and grazing habits similar to feral goats, cattle, axis deer and mouflon.

#### Other Introduced Vertebrates

##### Rats

There are three species of introduced rats in the Hawaiian Islands. Studies of Polynesian rat (*Rattus exulans*) DNA suggest they first appeared in the Hawaiian Islands along with emigrants from the Marquesas about 400 A.D., with a second interaction around 1100 A.D. (Ziegler 2002, p. 315). The black rat (*R. rattus*) and the Norway rat (*R. norvegicus*) most likely arrived in the Hawaiian Islands more recently, as stowaways on ships sometime in the late 19th century (Atkinson and Atkinson 2000, p. 25). The Polynesian rat and the black rat are primarily found in the wild, in dry to wet habitats, while the Norway rat is typically found in manmade habitats such as urban areas or agricultural fields (Tomich 1986, p. 41). The black rat is widely distributed among the main Hawaiian Islands and can be found in a broad range of ecosystems up to 9,744 ft (2,970 m), but it is most common at low- to mid-elevations (Tomich 1986, pp. 38–40). While Sugihara (1997, p. 194) found both the black and Polynesian rats up to 6,972-ft (2,125-m) elevation on Maui, the Norway rat was not seen at the higher elevations in his study. Rats occur in nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff), and predation by rats is a threat to 23 of the 37 plant species, and all 3 species of tree snails, in this final rule (see Table 4).

##### Rat Impacts on Plants

Rats impact native plants by eating fleshy fruits, seeds, flowers, stems, leaves, roots, and other plant parts (Atkinson and Atkinson 2000, p. 23), and can seriously affect regeneration. Research on rats in forests in New Zealand has also demonstrated that, over time, differential regeneration as a consequence of rat predation may alter the species composition of forested areas (Cuddihy and Stone 1990, pp. 68–69). Rats have caused declines or even the total elimination of island plant species (Campbell and Atkinson 1999, cited in Atkinson and Atkinson 2000, p. 24). In the Hawaiian Islands, rats may consume as much as 90 percent of the seeds produced by some trees, or in some cases prevent the regeneration of forest species completely (Cuddihy and Stone 1990, pp. 68–69). All three species of rat (black, Norway, and Polynesian) have been reported to adversely impact many endangered and threatened Hawaiian plants (Stone 1985, p. 264; Cuddihy and Stone 1990, pp. 67–69). Plants with fleshy fruits are particularly susceptible to rat predation, including some of the species addressed in this final rule. For example, the fruits of plants in the bellflower family (e.g., *Cyanea* spp.) appear to be a target of rat predation (Cuddihy and Stone 1990, pp. 67–69). In addition to all 12 species of *Cyanea* (*Cyanea asplenifolia*, *C. duvalliorum*, *C. grimesiana* ssp. *grimesiana*, *C. horrida*, *C. kunthiana*, *C. magnicalyx*, *C. maritae*, *C. mauiensis*, *C. munroi*, *C. obtusa*, *C. profuga*, and *C. solanacea*), 11 other species of plants in this final rule are adversely impacted by rat predation, including *Bidens campylotheca* ssp. *pentamera*, *B. campylotheca* ssp. *waihoiensis*, *B. conjuncta* (Bily *et al.* 2003, pp. 1–16), *Mucuna sloanei* var. *persericea*, *Myrsine vaccinioides*, *Peperomia subpetiolata*, *Pittosporum halophilum*, *Pleomele fernaldii*, *Santalum haleakalae* var. *lanaiense*, *Schiedea laui*, and *Wikstroemia villosa* (HBMP 2008; Harbaugh *et al.* 2010, p. 835). As rats occur in nine of the described ecosystems (coastal, lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) on Molokai, Lanai, and Maui, the results from the above studies, in addition to direct observations from field biologists, suggest that rats can directly damage or destroy native plants.

##### Rat Impacts on Tree Snails

Rats (*Rattus* spp.) have been suggested as the invasive animal responsible for likely the greatest number of animal

extinctions on islands throughout the world, including extinctions of various snail species (Townsend *et al.* 2006, p. 88). In the Hawaiian Islands, rats are known to prey upon endemic arboreal snails (Hadfield *et al.* 1993, p. 621). In the Waianae Mountains of Oahu, Meyer and Shiels (2009, p. 344) found shells of the endangered endemic Oahu tree snail (*Achatinella mustelina*) with characteristic rat damage (e.g., damage to the shell opening and cone tip), but noted that rat crushing of shells may limit the ability to adequately quantify the threat. On Lanai, Hobdy (1993, p. 208) found numerous shells of *Partulina variabilis*, one of the tree snails in this final rule, on the ground with damage characteristic of rat predation. Likewise in a 2005 survey on Lanai, Hadfield (2005, pp. 3–4) found shells of *Partulina semicarinata*, another tree snail species in this rule, on the ground with characteristic rat damage. Surveys in 2009 led Hadfield and colleagues to conclude that populations of *Partulina redfieldi* (a tree snail endemic to lowland and montane forests on Molokai) had declined by 85 percent since 1995 due to rat predation (Hadfield and Saufler 2009, p. 1). On Maui, rat predation on the tree snail species *Newcombia cumingi*, addressed in this final rule, has led to a decrease in the number of individuals (Hadfield 2006 in litt., p. 3; 2007, p. 9; 2011, pers. comm.). As rats are found in nine of the described ecosystems on Lanai and Maui (the islands on which *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis* occur), including the three ecosystems (lowland wet, montane wet, and wet cliff) in which the three tree snails in this rule are found, the results of the above studies, in addition to direct observations from field biologists, suggest that rats directly damage or destroy Hawaiian tree snails and are a serious and ongoing threat to the three tree snail species in this final rule.

##### Jackson's Chameleon

Several dozen Jackson's chameleons (*Chamaeleo jacksonii*), native to Kenya and Tanzania, were introduced to Hawaii in the early 1970s through the pet trade (Holland *et al.* 2010, p. 1,438). Inter-island transport of Jackson's chameleons for the pet trade was unrestricted until 1997, when they were classified as "injurious wildlife," and export as well as inter-island transport was prohibited (State of Hawaii 1996, H.A.R. 13–124–3; Holland *et al.* 2010, p. 1,439). Currently, there are established populations on all of the main Hawaiian Islands, with the greatest number of individuals on the islands of Hawaii, Maui, and Oahu (Holland *et al.* 2010, p.

1,438). Jackson's chameleons prey on native insects and tree snails, including the endangered Oahu tree snail (*Achatinella mustelina*) (Holland *et al.* 2010, p. 1,438; Hadfield 2011, pers. comm.). Jackson's chameleons may be expanding their range in the wild from low-elevation to higher elevation pristine native forest, which may result in catastrophic impacts to native ecosystems and the species supported by those ecosystems, including the lowland wet ecosystems on Maui and Lanai that support the tree snails *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*, and the montane wet and wet cliff ecosystems on Lanai that support *P. semicarinata* and *P. variabilis*. Because Jackson's chameleons are likely found in, or expanding their range into, all of the ecosystems in which the three tree snails addressed in this final rule are found, and are known to prey on tree snails, predation by Jackson's chameleon is a potentially serious threat to the tree snails *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*.

#### Invertebrates

##### Nonnative Slugs

Predation by nonnative snails and slugs adversely impacts 26 of the 37 plant species (*Bidens campylotheca* ssp. *waihoiensis*, *B. conjuncta*, *Cyanea asplenifolia*, *C. duvalliorum*, *C. grimesiana* ssp. *grimesiana*, *C. horrida*, *C. kunthiana*, *C. magnicalyx*, *C. maritae*, *C. mauiensis*, *C. munroi*, *C. obtusa*, *C. profuga*, *C. solanacea*, *Cyrtandra filipes*, *Geranium hillebrandii*, *Myrsine vaccinioides*, *Peperomia subpetiolata*, *Phyllostegia bracteata*, *P. haliakalae*, *P. pilosa*, *Santalum haleakalae* var. *lanaiense*, *Schiedea jacobii*, *S. laui*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*; see Table 4) in this final rule through mechanical damage, destruction of plant parts, and mortality (Mitchell *et al.* 2005; Joe 2006, p. 10; HBMP 2008; PEPP 2008, pp. 48–49, 52–53, 57, 70; PEPP 2010, pp. 1–121). On Oahu, slugs have been reported to destroy the endangered plants *Cyanea calycina* and *Cyrtandra kaulantha* in the wild, and have been observed eating leaves and fruit of wild and cultivated individuals of *Cyanea* (Mehrhoff 1995, in litt.; U.S. Army Garrison 2005, pp. 3–34, 3–51). In addition, slugs have damaged individuals of other *Cyanea* and *Cyrtandra* species in the wild (Wood 2001, in litt.; Sailer and Kier 2002, in litt., p. 3; PEPP 2007, p. 38; PEPP 2008, pp. 23, 49, 52–53, 57).

Little is known about predation of certain rare plants by slugs; however,

information in the U.S. Army's 2005 "Status Report for the Makua Implementation Plan" and from Keir (2013, in litt.) indicates that slugs can be a threat to all species of *Cyanea* (U.S. Army Garrison 2005, p. 3–51; Keir 2013, in litt.). Research investigating slug herbivory and control methods shows that slug impacts on seedlings of *Cyanea* spp. results in up to 80 percent seedling mortality (U.S. Army Garrison 2005, p. 3–51). Slug damage has also been reported on other Hawaiian plants including *Argyroxiphium grayanum* (greensword), *Alsinidendron* sp., *Hibiscus* sp., the endangered plant *Schiedea kaalae* (maolioli), the endangered plant *Solanum sandwicense* (popolo aiakeakua), and *Urera* sp. (Gagne 1983, p. 190–191; Sailer, pers. comm. cited in Joe 2006, pp. 28–34).

Joe and Daehler (2008, p. 252) found that native Hawaiian plants are more vulnerable to slug damage than nonnative plants. In particular, they found that the individuals of the endangered plants *Cyanea superba* and *Schiedea obovata* had 50 percent higher mortality when exposed to slugs when compared to individuals of the same species that were protected within slug exclosures. As slugs are found in eight of the described ecosystems (lowland dry, lowland mesic, lowland wet, montane dry, montane mesic, montane wet, dry cliff, and wet cliff) on Molokai, Lanai, and Maui, the data from the above studies, in addition to direct observations from field biologists, suggest that slugs can directly damage or destroy native plants.

##### Nonnative Snails

Several species of nonnative snails have been inadvertently introduced to Hawaii. However, in 1955, the rosy wolf snail (*Euglandina rosea*) was purposely introduced to Hawaii from Florida in an attempt to control another nonnative, the giant African snail (*Achatina fulica*). The giant African snail is commonly found in Honolulu gardens and is one of the largest snails in the world, in addition to being recognized as one of the world's most damaging pests to crop plants (Peterson 1957, pp. 643–658; Stone and Anderson 1988, p. 134). The giant African snail appears to have declined throughout the Hawaiian Islands although it is unclear if this decline is due to the rosy wolf snail or other unrelated reasons (Cowie 1997, p. 15). The rosy wolf snail is now found on six of the eight main Hawaiian Islands (its presence on Niihau and Kahoolawe has not been confirmed) and has expanded its range on those islands to include cooler, mid-elevation forests where many endemic tree snails are

found. This nonnative snail is likely responsible for the decline and extinction of many of Hawaii's native tree snails (Stone and Anderson 1988, p. 134; Hadfield *et al.* 1993, p. 621; Hadfield 2010a, in litt.). In 1979, the rosy wolf snail decimated a population of the endangered Oahu tree snail (*Achatinella mustelina*), as well as all other tree snails at the same study site (Hadfield and Mountain 1980, p. 357). According to Hadfield (2007, pp. 6–9), the rosy wolf snail is currently the greatest threat to the only known population of *Newcombia cumingi*, one of the three tree snails addressed in this final rule. In addition, the nonnative garlic snail (*Oxychilus alliarius*), a predator on the smaller achatinellid snails, may be a potential threat to *Newcombia cumingi* (Hadfield 2010a, in litt.). Hadfield (2007, pp. 6–9) reported finding many shells of the garlic snail within the habitat of *N. cumingi* on Maui. As the rosy wolf snail can be found in three of the described ecosystems (lowland wet, montane wet, and wet cliff) on Lanai and Maui (the islands on which *N. cumingi*, *Partulina semicarinata*, and *P. variabilis* occur), the results from the studies above, in addition to observations by field biologists, suggest that the rosy wolf snail has the potential to severely impact the three tree snails in this final rule.

##### Nonnative Flatworms

The extinction of native land snails on several Pacific Islands has been attributed to the terrestrial flatworm *Platydemus manokwari* (Sugiura 2010, p. 1,499). This flatworm has decimated populations of native tree snails on Guam (Hopper and Smith 1992, pp. 78, 82–83). In the Hawaiian Islands, *Platydemus manokwari* has been found on the islands of Oahu and Hawaii, and is likely on all of the main islands (Miller 2011, pers. comm.). Although *P. manokwari* has not been reported from the same locations as the three tree snails addressed in this final rule, it is a potential threat to these species because it likely co-occurs on the islands of Molokai, Lanai, and Maui, and it is a known predator on tree snails.

##### Conservation Efforts To Reduce Disease or Predation

There are no approved HCPs, SHAs, or CCAs that specifically address these 40 species and threats from predation. In addition, we are unaware of any voluntary actions that address the three species of tree snails and the threat from disease. We are aware of several MOUs that are under development that will

specifically address one or more of these 40 species and may address threats from predation. We acknowledge that in the State of Hawaii there are several voluntary conservation efforts (e.g., construction of fences) that may be helping to ameliorate the threats to the 40 species addressed in this final rule due to predation by nonnative animal species, specifically predation by feral ungulates. However, these efforts are overwhelmed by the number of threats, the extent of these threats across the landscape, and the lack of sufficient resources (e.g., funding) to control or eradicate them from all areas where these 40 species occur now or occurred historically. See above, "Conservation Efforts to Reduce Habitat Destruction, Modification, or Curtailment of Its Range," for a summary of some voluntary conservation actions to address threats from feral ungulates.

The State's University of Hawaii receives funding from the Service and other sources to propagate and maintain in captivity the two Lanai tree snails and Newcomb's tree snail. However, the numbers of individuals of both Lanai tree snail species appear to be declining in captivity and individuals of Newcomb's tree snail do not survive long in captivity (Hadfield 2008, p. 1–11; Hadfield 2010, pers. comm.; Hadfield 2011, pers. comm.). This program does not address threats to these three tree snails from predation by nonnative species in the wild nor threats from disease in captivity. Recently (August 2012), the Service and MLP entered into a cooperative agreement to provide funding for the construction of a fenced snail enclosure at the only known site for Newcomb's tree snail (Service 2012, in litt.). The purpose of the fenced enclosure is to protect individuals of this tree snail *in-situ* from predation by rodents (e.g., rats and mice) and predatory nonnative snails. Construction of the fenced enclosure has not yet been initiated.

#### Summary of Disease or Predation

We are unaware of any information that indicates that disease is a threat to the 37 plant species in this final rule. Disease is a potential threat to the three species of tree snails in this rule, as recovery of these species likely will include captive propagation and disease is suspected to be a cause of currently unsuccessful captive propagation of *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*. However, at this time, we have no evidence to suggest that disease is acting on the wild populations such that it may be considered a significant threat to the species.

Although conservation measures are in place in some areas where each of the 40 species in this final rule occur, information does not indicate that they are ameliorating the threat of predation. Therefore, we consider predation by nonnative animal species (pigs, goats, axis deer, mouflon sheep, cattle, rats, Jackson's chameleon, slugs, snails, and flatworms) to pose an ongoing threat to all 40 species in this final rule throughout their ranges for the following reasons:

(1) Observations and reports have documented that pigs, goats, axis deer, mouflon sheep, and cattle browse and trample 35 of the 37 plant species (see Table 4), in addition to other studies demonstrating the negative impacts of ungulate browsing and trampling on native plant species of the islands (Spatz and Mueller-Dombois 1973, p. 874; Diong 1982, p. 160; Cuddihy and Stone 1990, p. 67).

(2) Nonnative rats and slugs cause mechanical damage to plants and destruction of plant parts (branches, fruits, and seeds), and are considered a threat to 30 of the 37 plant species in this rule (see Table 4). All 40 species in this final rule are impacted by either introduced ungulates, as noted in item 1, above, or nonnative rats and slugs, or both.

(3) Rat damage has been observed on shells of dead individuals of the tree snails *Partulina variabilis* and *P. semicarinata* on Lanai, as well as on other native tree snails on Oahu and Molokai, indicating rats are a likely cause of mortality of these species. Predation by rats has been linked with the dramatic declines of some populations of native tree snails (Hobdy 1993, p. 208; Hadfield and Saufler 2009, p. 1; Meyer and Shields 2009, p. 344). Rat predation has been documented on the tree snail species *Newcombia cumingi* (Hadfield 2006 in litt., p. 3; Hadfield 2007, p. 9; Hadfield 2010a, in litt.). Although funding has recently been provided to construct a fenced enclosure to protect individuals of this tree snail *in-situ* from predation by rodents (e.g., rats and mice) and predatory nonnative snails, construction has not yet been initiated. Because rats are found in all of the ecosystems in which the three tree snails addressed in this final rule are found, and rats are known to prey on tree snails, we consider predation by rats to be a serious and ongoing threat to *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*.

(4) Jackson's chameleon, which preys on native insects and tree snails, has established populations in the wild on all the main Hawaiian Islands. Jackson's

chameleon is likely found in, or is in the process of expanding its range to include, all of the ecosystems that support the three tree snails addressed in this final rule. Predation by this nonnative reptile is a potentially serious threat to *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*.

(5) Hawaiian tree snails are vulnerable to predation by the nonnative rosy wolf snail, which is found on all the main Hawaiian Islands and whose range likely overlaps that of the three tree snail species we are listing. We therefore consider *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis* to be adversely impacted by predation by the nonnative rosy wolf snail. Although funding has recently been provided to construct a fenced enclosure to protect individuals of *Newcombia cumingi in-situ* from predation by rodents and predatory nonnative snails, construction has not yet been initiated. In addition, the nonnative garlic snail may be a potential threat to one of the tree snails addressed in this final rule, *N. cumingi*, because it is a known predator on smaller tree snails in the same family as *N. cumingi* and shells of the garlic snail have been found in *N. cumingi* habitat (Stone and Anderson 1988, p. 134; Hadfield *et al.* 1993, p. 621; Hadfield 2010a, in litt.).

(6) The nonnative flatworm, *Platydemus manokwari*, is a potential threat to all three species of tree snails addressed in this final rule (Hadfield 2010b, in litt.; Sugiura 2010, pp. 1,499–1,501) because this flatworm has decimated native tree snail populations on other Pacific Islands and likely occurs on all the main Hawaiian Islands, including the islands of Lanai and Maui, where the three tree snails are found.

These threats are serious and ongoing, act in concert with other threats to the species, and are expected to continue or increase in severity and intensity into the future without effective management actions to control or eradicate them. In addition, negative impacts to native Hawaiian plants on Molokai from grazing and browsing by the blackbuck antelope are likely should this nonnative ungulate increase in numbers and range on the island. The combined threat of ungulate, rat, and invertebrate predation on native Hawaiian flora and fauna suggests the need for immediate implementation of recovery and conservation methodologies.

#### D. The Inadequacy of Existing Regulatory Mechanisms

##### Inadequate Habitat Protection

Currently, there are no existing Federal, State, or local laws, treaties, or regulations that specifically conserve or protect the 40 species addressed in this final rule, or adequately address the threats described in this rule. Although the State of Hawaii's Plant Extinction Prevention Program supports conservation of the plant species by securing seeds or cuttings from the rarest and most critically endangered native species for propagation, the program is nonregulatory and has not yet been able to directly address broad-scale threats to plants by invasive species.

The capacity of Federal and State agencies and their nongovernmental partners in Hawaii to mitigate the effects of introduced pests, such as ungulates and weeds, is limited due to the large number of taxa currently causing damage (Coordinating Group on Alien Pest Species (CGAPS) 2009). Many invasive weeds established on Molokai, Lanai, and Maui have currently limited but expanding ranges and are of concern. Resources available to reduce the spread of these species and counter their negative ecological effects are limited. Control of established pests is largely focused on a few invasive species that cause significant economic or environmental damage to public and private lands. Comprehensive control of an array of invasive pests and management to reduce disturbance regimes that favor certain invasive species remains limited in scope. If current levels of funding and regulatory support for invasive species control are maintained on Molokai, Lanai, and Maui, the Service expects existing programs to continue to exclude or, on a very limited basis, control invasive species only in high-priority areas. Threats from established pests (e.g., nonnative ungulates, weeds, and invertebrates) are ongoing and expected to continue into the future.

##### Feral Ungulates

Nonnative ungulates pose a major ongoing threat to 35 of the 37 plant species and 2 of the 3 tree snail species—*Partulina semicarninata* and *P. variabilis*—through destruction and degradation of terrestrial habitat, and through direct predation of 35 of the plant species (see Table 4). The State of Hawaii provides game mammal (feral pigs and goats, axis deer, and mouflon sheep) hunting opportunities on 15 State-designated public hunting areas on the islands of Molokai, Lanai, and

Maui (State of Hawaii 1999, H.A.R. 13–123; HDLNR 2009, pp. 20–21). The State's management objectives for game animals range from maximizing public hunting opportunities (e.g., “sustained yield”) in some areas to removal by State staff, or their designees, in other areas (State of Hawaii, H.A.R. 13–123). Thirty-four of the 37 plant species have populations in areas where terrestrial habitat may be manipulated for game enhancement and game populations are maintained at prescribed levels using public hunting (HBMP 2008; State of Hawaii, H.A.R. 13–123). Public hunting areas are not fenced, and game mammals have unrestricted access to most areas across the landscape, regardless of underlying land-use designation. While fences are sometimes built to protect areas from game mammals, the current number and locations of fences are not adequate to prevent habitat degradation and destruction for 37 of the 40 species, or the direct predation of 35 of the 37 plant species on Molokai, Lanai, and Maui (see Table 4). However, the State game animal regulations are not designed nor intended to provide habitat protection, and there are no other regulations designed to address habitat protection from ungulates.

##### Introduction of Nonnative Species

Currently, four agencies are responsible for inspection of goods arriving in Hawaii (CGAPS 2009). The Hawaii Department of Agriculture (HDOA) inspects domestic cargo and vessels and focuses on pests of concern to Hawaii, especially insects or plant diseases not yet known to be present in the State. The U.S. Department of Homeland Security-Customs and Border Protection (CBP) is responsible for inspecting commercial, private, and military vessels and aircraft and related cargo and passengers arriving from foreign locations. CBP focuses on a wide range of quarantine issues involving non-propagative plant materials (processed and unprocessed); wooden packing materials, timber, and products; internationally regulated commercial species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); federally listed noxious seeds and plants; soil; and pests of concern to the greater United States, such as pests of mainland U.S. forests and agriculture. The U.S. Department of Agriculture-Animal and Plant Health Inspection Service-Plant Protection and Quarantine (USDA-APHIS-PPQ) inspects propagative plant material, provides identification services for arriving plants and pests, conducts pest risk

assessments, trains CBP personnel, conducts permitting and preclearance inspections for products originating in foreign countries, and maintains a pest database that, again, has a focus on pests of wide concern across the United States (HDOA 2009). The Service inspects arriving wildlife products, enforces the injurious wildlife provisions of the Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371 *et seq.*), and prosecutes CITES violations.

The State of Hawaii's unique biosecurity needs are not recognized by Federal import regulations. Under the USDA-APHIS-PPQ's commodity risk assessments for plant pests, regulations are based on species considered threats to the mainland United States and do not address many species that could be pests in Hawaii (Hawaii Legislative Reference Bureau (HLRB) 2002; USDA-APHIS-PPQ 2010; CGAPS 2009). Interstate commerce provides the pathway for invasive species and commodities infested with non-federal quarantine pests to enter Hawaii. Pests of quarantine concern for Hawaii may be intercepted at Hawaiian ports by Federal agents but are not always acted on by them because these pests are not regulated under Federal mandates. Hence, Federal protection against pest species of concern to Hawaii has historically been inadequate. It is possible for the USDA to grant Hawaii protective exemptions under the “Special Local Needs Rule,” when clear and comprehensive arguments for both agricultural and conservation issues are provided; however, this exemption procedure operates on a case-by-case basis and is extremely time-consuming to satisfy. Therefore, that avenue may only provide minimal protection against the large diversity of foreign pests that negatively impact Hawaii.

Adequate staffing, facilities, and equipment for Federal and State pest inspectors and identifiers in Hawaii devoted to invasive species interdiction are critical biosecurity gaps (HLRB 2002; USDA-APHIS-PPQ 2010; CGAPS 2009). State laws have recently been passed that allow the HDOA to collect fees for quarantine inspection of freight entering Hawaii (e.g., Act 36 (2011) H.R.S. 150A–5.3). Legislation enacted in 2011 (H.B. 1568) requires commercial harbors and airports in Hawaii to provide biosecurity and to facilitate cargo inspections. The introduction of new pests to the State of Hawaii is a significant risk to federally listed species because the existing regulations are inadequate for the reasons discussed in the sections below.

In 1995, CGAPS, a partnership composed primarily of managers from

every major Federal, State, County, and private agency and organization involved in invasive species work in Hawaii, was formed in an effort to improve communication, increase collaboration, and promote public awareness (CGAPS 2009). This group facilitated the formation of the Hawaii Invasive Species Council (HISC), which was created by gubernatorial executive order in 2002, to coordinate local initiatives for the prevention and control of invasive species by providing policy level direction and planning for the State departments responsible for invasive species issues. In 2003, the Governor signed into law Act 85, which conveys statutory authority to the HISC to continue to coordinate approaches among the various State and Federal agencies, and international and local initiatives for the prevention and control of invasive species (HDLNR 2003, p. 3–15; HISC 2009; H.R.S. 194–2(a)). Some of the recent priorities for the HISC include interagency efforts to control nonnative species such as the plants *Miconia calvescens* (miconia) and *Cortaderia* spp. (pampas grass), coqui frogs (*Eleutherodactylus coqui*), and ants (HISC 2009). Since 2009, State funding for HISC has been cut by approximately 50 percent (total funding dropped from \$4 million in fiscal year (FY) 2009 to \$2 million in FY 2010, and to \$1.8 million for FY 2011 to FY 2013 (Atwood 2012, in litt.; Atwood 2013, in litt.)). Congressional earmarks made up some of the shortfall in State funding in 2010 and into 2011. These funds supported ground crew staff that would otherwise have been laid off due to the shortfall in State funding (Clark 2012, in litt.). Following a 50 percent reduction from FY 2009 funding, the HISC budget has remained relatively flat (i.e., State funding is equal to funding provided in 2009) from FY 2010 to FY 2013 (Atwood 2013, in litt.). Current positions provided by HISC are fewer than those supported in 2009; most of the positions have been lost through attrition and have not been refilled (Atwood 2012, in litt.). In addition, HISC funds fewer projects and provides fewer services (Atwood 2012, in litt.; Clark 2012, in litt.) than in 2009 and earlier. Many projects (such as invasive species and biological control research) that were previously funded by HISC are receiving negligible HISC funding or remain unfunded (Atwood 2012, in litt.; Clark 2012, in litt.).

#### Nonnative Animal Species

##### Vertebrate Species

The State of Hawaii's laws prohibit the importation of all animals unless

they are specifically placed on a list of allowable species (HLRB 2002; CGAPS 2010). The importation and interstate transport of invasive vertebrates is federally regulated by the Service under the Lacey Act as “injurious wildlife” (Fowler *et al.* 2007, pp. 353–359); the current list of vertebrates considered as “injurious wildlife” is provided at 50 CFR 16. The law in its current form has limited effectiveness in preventing invasive vertebrate introductions into the State of Hawaii because the list of vertebrates considered to be “injurious wildlife” under the Lacey Act is relatively limited.

##### Nonnative Invertebrate Species

Predation by nonnative invertebrate pests (flatworms, slugs, snails) adversely impacts 26 of the plant species and the 3 tree snails addressed in this rule (see Table 4 and Factor C. *Disease or Predation*, above). It is likely that the introduction of most nonnative invertebrate pests to the State has been and continues to be accidental and incidental to other intentional and permitted activities. The prevention and control of introduction of pest species in Hawaii is the responsibility of Hawaii State government and Federal agencies, and is being voluntarily addressed by a few private organizations. Even though these agencies have regulations and some controls in place (see above), the introduction and movement of nonnative invertebrate pest species between islands and from one watershed to the next continues. For example, an average of 20 new alien invertebrate species were introduced to Hawaii per year since 1970, an increase of 25 percent over the previous totals between 1930 and 1970 (TNCH 1992, p. 8). Existing regulatory mechanisms therefore appear inadequate to ameliorate the threat of introductions of nonnative invertebrates, and we have no evidence to suggest that any change to this situation is anticipated in the future.

##### Nonnative Plant Species

Nonnative plants destroy and modify habitat throughout the ranges of 36 of the 40 species being addressed in this final rule (see Table 4, above). As such, they represent a serious and ongoing threat to each of these species. In addition, nonnative plants have been shown to outcompete native plants and convert native-dominated plant communities to nonnative plant communities (See “Habitat Destruction and Modification by Nonnative Plants,” under Factor A, above).

The State of Hawaii allows the importation of most plant taxa, with

limited exceptions, if shipped from domestic ports (HLRB 2002; USDA–APHIS–PPQ 2010; CGAPS 2009). Hawaii's plant import rules (H.A.R. 4–70) regulate the importation of 13 plant taxa of economic interest; regulated crops include pineapple, sugarcane, palms, and pines. Certain horticultural crops (e.g., orchids) may require import permits and have pre-entry requirements that include treatment or quarantine or both either prior to or following entry into the State. The State noxious weed list (H.A.R. 4–68) and USDA–APHIS–PPQ's Restricted Plants List restrict the import of a limited number of noxious weeds. If not specifically prohibited, current Federal regulations allow plants to be imported from international ports with some restrictions. The Federal Noxious Weed List (see 7 CFR 360.200) includes few of the many globally known invasive plants, and plants in general do not require a weed risk assessment prior to importation from international ports. The USDA–APHIS–PPQ is in the process of finalizing rules to include a weed risk assessment for newly imported plants. Although the State has general guidelines for the importation of plants, and regulations are in place regarding the plant crops mentioned above, the intentional or inadvertent introduction of nonnative plants outside the regulatory process and movement of species between islands and from one watershed to the next continues, and represents a threat to native flora for the reasons described above. In addition, government funding is inadequate to provide for sufficient inspection services and monitoring. One study concluded that the plant importation laws virtually ensure new invasive plants will be introduced via the nursery and ornamental trade, and that outreach efforts cannot keep up with the multitude of new invasive plants being distributed. The author states the only thing that wide-scale public outreach can do in this regard is to let the public know new invasive plants are still being sold, and they should ask for noninvasive or native plants instead (Martin 2007, in litt.).

On the basis of the above information, existing State and Federal regulatory mechanisms are not preventing introduction of nonnative species into Hawaii via interstate and international mechanisms, or via intrastate movement of nonnative species between islands and watersheds in Hawaii. Therefore, State and Federal regulatory mechanisms do not adequately protect the 40 species being addressed in this final rule from the threat of new

introductions of nonnative species or the continued expansion of nonnative species populations on and between islands and watersheds. Nonnative species may prey upon, modify or destroy habitat of, or directly compete with one or more of the 40 species for food, space, and other necessary resources. The impacts from these introduced threats are ongoing and are expected to continue into the future.

#### Summary of Inadequacy of Existing Regulatory Mechanisms

Existing State and Federal regulatory mechanisms are not preventing the introduction into Hawaii of nonnative species or the spread of nonnative species between islands and watersheds. Habitat-altering nonnative plant species (Factor A) and predation by nonnative animal species (Factor C) pose a major ongoing threat to the 40 species being addressed in this final rule. Thirty-five of the 37 plant species experience threats from habitat degradation and loss by nonnative plants (Factor A), and all 37 plants experience threats from nonnative animals (Factor A and Factor C). All three tree snail species experience threats from habitat degradation and loss by nonnative plants (*Newcombia cumingi*) or nonnative animals (*Partulina semicarinata* and *P. variabilis*). The three tree snails experience threats from predation by nonnative animals (Factor C). Therefore, we conclude these existing regulatory mechanisms are inadequate to sufficiently reduce these threats to all 40 species.

#### E. Other Natural or Manmade Factors Affecting Their Continued Existence

Other factors that pose threats to some or all of the 40 species include small numbers of individuals and small numbers of populations, hybridization, lack of regeneration, and human trampling as a result of hiking and other activities. Each threat is discussed in detail below, along with identification of which species are affected by these threats.

#### Small Number of Individuals and Populations

Species that are endemic to single islands are inherently more vulnerable to extinction than are widespread species, because of the increased risk of genetic bottlenecks, random demographic fluctuations, climate change effects, and localized catastrophes such as hurricanes, landslides, rockfalls, drought, and disease outbreaks (Pimm *et al.* 1988, p. 757; Mangel and Tier 1994, p. 607).

These problems are further magnified when populations are few and restricted to a very small geographic area, and when the number of individuals in each population is very small. Populations with these characteristics face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors (Gilpin and Soulé 1986, pp. 24–34). A single, stochastic event can result in the extinction of an entire species, if all the representatives of that species are concentrated in a single area. In addition, small, isolated populations often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (e.g., Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Very small, isolated populations are also more susceptible to reduced reproductive vigor due to ineffective pollination (plants), inbreeding depression (plants and snails), and hybridization (plants). The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above (see Factors A and C, above).

#### Plants

The following 20 plant species in this final rule face the threat of limited numbers (i.e., they total fewer than 50 individuals in the wild): *Cyanea grimesiana* ssp. *grimesiana*, *C. horrida*, *C. magnicalyx*, *C. maritae*, *C. mauiensis*, *C. munroi*, *C. obtusa*, *C. profuga*, *C. solanacea*, *Cyrtandra ferripilosa*, *Festuca molokaiensis*, *Peperomia subpetiolata*, *Phyllostegia bracteata*, *P. haliakalae*, *P. pilosa*, *Pittosporum halophilum*, *Schiedea jacobii*, *S. laui*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*. We consider small population size to be a threat to these species for the following reasons:

- *Cyanea grimesiana* ssp. *grimesiana* has not been observed since 1991 on Molokai (PEPP 2010, p. 45).

- The only known wild occurrences of *Cyanea horrida*, *C. magnicalyx*, *C. maritae*, and *C. munroi* are susceptible to threats from habitat degradation or loss by flooding, landslides, or tree falls, or a combination of these, because of their locations in lowland wet, montane wet, and wet cliff ecosystems (TNC 2007; TNCH 2010a; HBMP 2008; PEPP 2009, pp. 23–24, 49–58).

- The last confirmed observation of *Cyanea mauiensis* in the wild was over 100 years ago. Botanists believe

individuals of this species still remain, as potentially suitable habitat has not been searched. However, there are no tissues, propagules, or seeds in storage or propagation (Lammers 2004, pp. 84–85; TNC 2007).

- *Cyanea obtusa* is susceptible to predation by feral pigs, goats, axis deer, and cattle, and to direct destruction and habitat degradation and loss by fire because the only two known individuals of this species are not protected from direct predation by ungulates, or from fire (Lau 2001, in litt.; PEPP 2007, p. 40; HBMP 2008; PEPP 2008, p. 55; Duvall 2010, in litt.).

- *Cyanea profuga* and *C. solanacea* are each known from fewer than five scattered occurrences in the montane wet ecosystem. These two plant species are susceptible to predation by nonnative pigs and goats, as well as habitat degradation or destruction by these nonnative animals and by landslides, rock and tree falls, or flooding, or a combination of these (HBMP 2008; PEPP 2009, pp. 23–24, 49–58; Bakutis 2010, in litt.; Perlman 2010, in litt.; Oppenheimer 2010a, in litt.; TNCH 2011, pp. 21, 57).

- *Cyrtandra ferripilosa* is known from two disparate occurrences totaling only a few individuals that are not protected from direct predation by nonnative pigs and goats (Oppenheimer 2010f, in litt.; Welton 2010b, in litt.).

- *Festuca molokaiensis*, known only from its original collection location on Molokai, has not been relocated for 2 years. Threats to this species include habitat destruction or direct predation by nonnative goats, nonnative plants, and fire (Oppenheimer 2011a, pers. comm.).

- Historically known from lower Waikamoi on east Maui, the identification of wild individuals of *Peperomia subpetiolata* has not been confirmed since 2001, although hybrids between this species and other species of *Peperomia* are reported in this area (HBMP 2008; NTBG 2009g, p. 2; Oppenheimer 2010a, in litt.; PEPP 2010, p. 96).

- Only one individual of *Phyllostegia bracteata* was known as recently as 2009, but even this single individual was not relocated later in the same year. Botanists continue to search potentially suitable habitat near the last known location for this ephemeral species (NTBG 2009h, p. 3; PEPP 2009, pp. 89–90; Oppenheimer 2010c, in litt.).

- The last known wild individual of *Phyllostegia haliakalae* on Maui had died by 2010, although there are outplantings of this species near the location of this individual. Botanists continue to search potentially suitable

habitat on Maui for this species. *Phyllostegia haliakalae* has not been relocated on Molokai or Lanai for close to 100 years (TNC 2007; HBMP 2008; Oppenheimer 2010c, in litt.; Oppenheimer 2011b, in litt.).

- The seven known individuals of *Phyllostegia pilosa* are not protected from direct predation by feral pigs and goats on Maui. This species has not been observed on Molokai for over 100 years (TNC 2007; HBMP 2008).

- *Pittosporum halophilum* is known from three disparate locations, each with one to three individuals, on Molokai and its offshore islets. These individuals are not protected from predation by feral pigs or rats, or from the threat of fire (Wood 2005, pp. 2, 41; Bakutis 2010, in litt.; Hobdy 2010, in litt.; Perlman 2010, in litt.).

- The only known wild individuals of *Schiedea jacobii* were likely destroyed by landslides because of their location along wet cliffs between Hanawi Stream and Kuhiwa drainage in the montane wet ecosystem on east Maui. The State plans to outplant propagated individuals in Hanawi Natural Area Reserve in 2011 (Wagner *et al.* 1999j, p. 286; HBMP 2008; Oppenheimer 2010a, in litt.; Perlman 2010, in litt.).

- The 24 to 34 individuals of *Schiedea laui* are facing imminent threats from flooding and landslides because of their location in a grotto (HBMP 2008; Bakutis 2010, in litt.).

- *Stenogyne kauaulaensis* is only known from three individuals. These plants face imminent threats from landslides and rockfalls because of their location on steep slopes, and from drought and fire in the montane mesic ecosystem on west Maui (Wood and Oppenheimer 2008, pp. 544–545; Oppenheimer 2010a, in litt.).

- *Wikstroemia villosa* is known only from a single occurrence, with two individuals (Peterson 1999, p. 1,291; TNC 2007; HBMP 2008; Oppenheimer 2010a, in litt.).

#### Tree Snails

Like most native island biota, the endemic Hawaiian tree snails are particularly sensitive to disturbances due to low population numbers and small geographic ranges (Hadfield *et al.* 1993, p. 610). We consider the three tree snail species at risk of decline and extinction due to threats associated with low numbers of individuals and populations because:

- *Newcombia cumingi* is known only from a single wild population of one individual and has not been successfully maintained in captivity (Hadfield 2007, pp. 2, 8; Hadfield 2008, p. 10; Higashino 2013, in litt.).

- The only known wild populations of *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis* face serious threats from predation by nonnative rats, Jackson's chameleons, and snails (Solem 1990, p. 35; Hadfield 1986, p. 325; Hadfield *et al.* 1993, p. 611; Hadfield 2007, p. 9; Hadfield 2009, p. 11; Hadfield and Sauffer 2009, p. 1595; Holland *et al.* 2010, p. 1,437).

- The number of individuals of *Partulina semicarinata* and *P. variabilis* has declined by approximately 50 percent between 1993 and 2005 at known locations (Hadfield 2005, p. 305).

#### Hybridization

Natural hybridization is a frequent phenomenon in plants and can lead to the formation of new species (Orians 2000, p. 1,949), or sometimes to the decline of species through genetic assimilation or "introgression" (Ellstrand 1992, pp. 77, 81; Levin *et al.* 1996, pp. 10–16; Rhymer and Simberloff 1996, p. 85). Hybridization, however, is especially problematic for rare species that come into contact with species that are abundant or more common (Rhymer and Simberloff 1996, p. 83). We consider hybridization to adversely impact four species in this final rule because it may lead to extinction of one or both of the original genotypically distinct species. Hybrids have been reported between *Bidens campylotheca* ssp. *pentamera* and *B. campylotheca* ssp. *waihoiensis*, two subspecies in this rule that occur in close proximity on east Maui. In addition, on east Maui, the species *Cyanea obtusa* is known from two individuals, but only hybrids between *C. obtusa* and the more abundant *C. elliptica* are known on west Maui. Furthermore, the current status of the species *Peperomia subpetiolata* is unknown because only hybrids between *P. subpetiolata* and *P. cookiana*, and perhaps *P. hertapetiola*, are known from its historically reported locations on east Maui.

#### Regeneration

Lack of, or low levels of, regeneration (reproduction and recruitment) in the wild has been observed and is a threat to *Pleomele fernaldii* (Oppenheimer 2010a, in litt.). Although there are currently approximately several hundred to 1,000 individuals, very little recruitment has been observed at the known locations over the past 10 years (Oppenheimer 2008d, in litt.). The reasons for this are not clearly understood.

#### Human Trampling and Hiking

Human impacts, including trampling by hikers, have been documented as a threat to *Cyanea maritae* and *Wikstroemia villosa* (Oppenheimer 2010a, in litt.; PEPP 2010, p. 51; Welton 2010b, in litt.) because individuals of these species are found near climbing or hiking trails. Individuals climbing and hiking off established trails could trample individual plants and contribute to soil compaction and erosion, preventing growth and establishment of seedlings (Oppenheimer 2010a, in litt.), as has been observed with other native species (Wood 2001, in litt.; MLP 2005, p. 23).

#### Conservation Efforts to Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

There are no approved HCPs, SHAs, CCAs, MOUs, or other voluntary actions that specifically address the threats to these 40 species from other natural or manmade factors. The State's PEP Program collects, propagates, or outplants 14 plant species that are addressed in this final rule (*Cyanea asplenifolia*, *C. horrida*, *C. magnicalyx*, *C. maritae*, *C. munroi*, *C. profuga*, *C. solanacea*, *Phyllostegia haliakalae*, *P. pilosa*, *Pittosporum halophilum*, *Schiedea jacobii*, *S. laui*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*) (PEPP 2011, pp. 75, 166, 191; PEPP 2012, pp. 6, 13, 34–36, 66–70, 73–81, 150, 159–160). While these actions are a step toward increasing the overall numbers and populations of these species in the wild, these actions are insufficient to eliminate the threat of limited numbers to the 14 plant species because the actions are relatively recent (i.e., in the last few years) and successful reproduction and replacement of outplanted individuals by seedlings, juveniles, and adults has not yet been observed in the wild. We are unaware of any voluntary conservation actions to address the threat to four plant species from hybridization, the threat of lack of regeneration to *Pleomele fernaldii*, or the threat from human trampling to *Cyanea maritae* and *Wikstroemia villosa*.

The State's University of Hawaii receives funding from the Service and other sources to propagate and maintain in captivity the two Lanai tree snails, *Partulina semicarinata* and *P. variabilis*, and Newcomb's tree snail (*Newcombia cumingi*). While these actions appear to be a step toward increasing the overall numbers of these species in captivity, both Lanai tree snail species appear to be declining in captivity and

individuals of Newcomb's tree snail do not survive long in captivity (Hadfield 2008, p. 1–11; Hadfield 2010, pers. comm.; Hadfield 2011, pers. comm.) (see *Disease* or *Predation*, above).

#### Summary of Other Natural or Manmade Factors Affecting Their Continued Existence

The conservation measures described above are insufficient to eliminate the threat from other natural or manmade factors to each of the 40 species addressed in this final rule. We consider the limited numbers of populations and few individuals (less than 50) to be a serious and ongoing threat to 20 of the 37 plant species in this final rule (*Cyanea grimesiana* ssp. *grimesiana*, *C. horrida*, *C. magnicalyx*, *C. maritae*, *C. mauiensis*, *C. munroi*, *C. obtusa*, *C. profuga*, *C. solanacea*, *Cyrtandra ferripilosa*, *Festuca molokaiensis*, *Peperomia subpetiolata*, *Phyllostegia bracteata*, *P. haliakalae*, *P. pilosa*, *Pittosporum halophilum*, *Schiedea jacobii*, *S. laui*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*) because: (1) These species may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression; (2) they may experience reduced levels of genetic variability, leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; and (3) a single catastrophic event may result in extirpation of remaining populations and extinction of the species. This threat applies to the entire range of each species.

The threat to the three tree snails *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis* from limited numbers of populations and individuals is ongoing and is expected to continue into the future because: (1) These species may experience reduced reproductive vigor due to inbreeding depression; (2) they may experience reduced levels of genetic variability leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; and (3) a single catastrophic event (e.g., hurricane, drought) may result in extirpation of remaining populations and extinction of these species. The limited distribution of these three species thus compounds the severity of the impact of the other threats discussed in this final rule.

In addition, the threat to *Bidens campylotheca* ssp. *pentamera*, *B. campylotheca* ssp. *waihoiensis*, *Cyanea obtusa*, and *Peperomia subpetiolata* from hybridization is ongoing and expected to continue into the future

because hybrids are reported between these species and other, more abundant species, and no efforts are being implemented in the wild to prevent potential hybridizations. In addition, we consider the threat to *Pleomele fernaldii* from lack of regeneration to be ongoing and to continue into the future because the reasons for the lack of recruitment in the wild are unknown and uncontrolled, and any competition from nonnative plants or habitat modification by ungulates or fire, or predation by ungulates or rats, could lead to the extirpation of this species. Also, ongoing human activities (e.g., trampling and hiking) are a threat to *Cyanea maritae* and *Wikstroemia villosa* and are expected to continue into the future because field biologists have reported trampling of vegetation near populations of *Cyanea maritae* and the two remaining wild individuals of *Wikstroemia villosa*, and the effects of these activities could lead to injury and death of individual plants, potentially resulting in extirpation from the wild.

#### Summary of Factors

The primary factors that pose serious and ongoing threats to one or more of the 40 species throughout their ranges in this final rule include: Habitat degradation and destruction by agriculture and urbanization, nonnative ungulates and plants, fire, natural disasters, and climate change, and the interaction of these threats (Factor A); overutilization due to collection of the three tree snail species for trade or market (Factor B); predation by nonnative animal species (pigs, goats, axis deer, mouflon sheep, cattle, rats, Jackson's chameleon, slugs, snails, and flatworms) (Factor C); inadequate regulatory mechanisms to address the threats posed by nonnative species (Factor D); and limited numbers of populations and individuals, hybridization, lack of regeneration, and ongoing human activities (e.g., trampling and hiking) (Factor E). While we acknowledge the voluntary conservation measures described above may help to ameliorate one or more of the threats to the 40 species addressed in this final rule, these conservation measures are insufficient to control or eradicate these threats from all areas where these species occur now or occurred historically.

#### Determination

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to each of the 40 Maui Nui species. We find that all of these species face significant threats to their

existence, which are ongoing and expected to continue into the future throughout their ranges, from the present destruction and modification of their habitats, primarily from nonnative feral ungulates and nonnative plants. Thirteen of the plant species (*Bidens campylotheca* ssp. *pentamera*, *Canavalia pubescens*, *Cyanea magnicalyx*, *C. mauiensis*, *C. obtusa*, *Festuca molokaiensis*, *Phyllostegia bracteata*, *P. haliakalae*, *Pittosporum halophilum*, *Pleomele fernaldii*, *Santalum haleakalae* var. *lanaiense*, *Schiedea salicaria*, and *Stenogyne kauaulaensis*) experience threats from habitat destruction and modification from fire, and 16 plant species (*Bidens campylotheca* ssp. *waihoiensis*, *Cyanea asplenifolia*, *C. duvalliorum*, *C. grimesiana* ssp. *grimesiana*, *C. horrida*, *C. magnicalyx*, *C. maritae*, *C. mauiensis*, *C. munroi*, *C. profuga*, *C. solanacea*, *Cyrtandra filipes*, *Schiedea jacobii*, *S. laui*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*) experience threats from habitat destruction and modification from landslides, rockfalls, treefalls, or flooding. The plants *Canavalia pubescens*, *Cyanea horrida*, *Festuca molokaiensis*, *Schiedea jacobii*, *S. salicaria*, and *Stenogyne kauaulaensis*, as well as the tree snails *Newcombia cumingi*, *Partulina semicarinata*, and *P. variabilis*, experience threats from habitat loss or degradation due to drought. All 40 species experience threats from the destruction and modification of their habitats from hurricanes, although their occurrence is not predictable. In addition, we are concerned about the effects of projected climate change on all species, particularly rising temperatures, but recognize there is limited information on the exact nature of impacts that these species may experience (Factor A).

Overcollection for commercial and recreational purposes poses a serious potential threat to all three tree snail species (Factor B). Predation and herbivory on all 37 plant species by feral pigs, goats, cattle, axis deer, mouflon, rats, and slugs poses a serious and ongoing threat, as does predation of all three tree snail species (*N. cumingi*, *P. semicarinata*, and *P. variabilis*) by rats, nonnative snails, and potentially Jackson's chameleon (Factor C). Existing regulatory mechanisms are inadequate to reduce current and ongoing threats posed by nonnative plants and animals to all 40 species (Factor D). There are current and ongoing threats to 20 plant species (*Cyanea grimesiana* ssp. *grimesiana*, *C. horrida*, *C. magnicalyx*, *C. maritae*, *C. mauiensis*, *C. munroi*, *C.*

*obtusa*, *C. profuga*, *C. solanacea*, *Cyrtandra ferripilosa*, *Festuca molokaiensis*, *Peperomia subpetiolata*, *Phyllostegia bracteata*, *P. haliakalae*, *P. pilosa*, *Pittosporum halophilum*, *Schiedea jacobii*, *S. laui*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*) and the three tree snails due to factors associated with small numbers of populations and individuals; to *Bidens campylothea* ssp. *pentamera*, *B. campylothea* ssp. *waihoiensis*, *Cyanea obtusa*, and *Peperomia subpetiolata* from hybridization; to *Pleomele fernaldii* from the lack of regeneration in the wild; and to *Cyanea maritae* and *Wikstroemia villosa* from hiking and trampling (Factor E) (see Table 4). These threats are exacerbated by these species' inherent vulnerability to extinction from stochastic events at any time because of their endemism, small numbers of individuals and populations, and restricted habitats.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that each of these endemic species is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Based on our analysis, we have no reason to believe that population trends for any of the species addressed in this final rule will improve, nor will the negative impacts of current threats acting on the species be effectively ameliorated in the future. Therefore, on the basis of the best available scientific and commercial data, we are listing, or—in the case of *Cyanea grimesiana* ssp. *grimesiana* and *Santalum haleakalae* var. *lanaiense*—reaffirming the listing of, the following 40 species as endangered in accordance with section 3(6) of the Act: the plants *Bidens campylothea* ssp. *pentamera*, *Bidens campylothea* ssp. *waihoiensis*, *Bidens conjuncta*, *Calamagrostis hillebrandii*, *Canavalia pubescens*, *Cyanea asplenifolia*, *Cyanea duvalliorum*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea horrida*, *Cyanea kunthiana*, *Cyanea magnicalyx*, *Cyanea maritae*, *Cyanea mauiensis*, *Cyanea munroi*, *Cyanea obtusa*, *Cyanea profuga*, *Cyanea solanacea*, *Cyrtandra ferripilosa*, *Cyrtandra filipes*, *Cyrtandra oxybapha*, *Festuca molokaiensis*, *Geranium hanaense*, *Geranium hillebrandii*, *Mucuna sloanei* var. *persericea*, *Myrsine vaccinioides*, *Peperomia subpetiolata*,

*Phyllostegia bracteata*, *Phyllostegia haliakalae*, *Phyllostegia pilosa*, *Pittosporum halophilum*, *Pleomele fernaldii*, *Santalum haleakalae* var. *lanaiense*, *Schiedea jacobii*, *Schiedea laui*, *Schiedea salicaria*, *Stenogyne kauaulaensis*, and *Wikstroemia villosa*; and the tree snails *Newcombia cumingi*, *Partulina semicarinata*, and *Partulina variabilis*.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Each of the 40 endemic Maui Nui species in this final rule is highly restricted in its range, and the threats occur throughout its range. Therefore, we assessed the status of each species throughout its entire range. In each case, the threats to the survival of these species occur throughout the species' range and are not restricted to any particular portion of that range. Accordingly, our assessment and determination applies to each species throughout its entire range.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities involving listed animals and plants are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that help to determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, non-government organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outlines, draft recovery plans, and the final recovery plans will be available from our Web site (<http://www.fws.gov/endangered>), or from our Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation, control of nonnative plants), management of threats from predation (e.g., feral ungulate control, rat control), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private and State lands.

Funding for recovery actions may be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, the State of Hawaii will be eligible for Federal funds to implement management actions that promote the protection and recovery of the 40 species. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Please let us know if you are interested in participating in recovery efforts for these listed species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) of the Act mandates that all Federal agencies shall utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered and threatened species listed under section 4 of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat. If a Federal action may affect the continued existence of a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

For the 40 plants and animals listed or reaffirmed as endangered in this final rule, Federal agency actions that may require consultation as described in the preceding paragraph include, but are not limited to, actions within the jurisdiction of the Natural Resources Conservation Service (NRCS), the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and branches of the Department of Defense (DOD). Examples of these types of actions include activities funded or authorized under the Farm Bill Program, Environmental Quality Incentives Program, Ground and Surface Water Conservation Program, Clean Water Act (33 U.S.C. 1251 *et seq.*), Partners for Fish and Wildlife Program, and DOD construction activities related to training or other military missions.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife and plants. The prohibitions, codified at 50 CFR 17.21 and 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export,

ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered or threatened wildlife and plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.62 for endangered species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation and survival of the species, and for incidental take in connection with otherwise lawful activities. With regard to endangered plants, a permit must be issued for the following purposes: For scientific purposes or for the enhancement of propagation or survival. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232-4181 (telephone 503-231-6131; facsimile 503-231-6243).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of a listed species. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Activities that take or harm the three tree snail species by causing significant habitat modification or degradation such that it causes actual injury by significantly impairing essential behavioral patterns. This may include introduction of nonnative species that compete with or prey upon the three species of tree snails or the unauthorized release of biological control agents that attack any life stage of these three species; and

(3) Damaging or destroying any of the 37 listed plants in violation of the Hawaii State law prohibiting the take of listed species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed species and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Endangered Species Permits, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232-4181 (telephone 503-231-6131; facsimile 503-231-6243).

The State of Hawaii's endangered species law (HRS, Section 195-D) is automatically invoked when a species is listed, and provides supplemental protection, including prohibiting take of these species and encouraging conservation by State government agencies. Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (H.R.S. 195D-5). Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to listed species is reinforced and supplemented by protection under State law.

#### **Required Determinations**

##### *National Environmental Policy Act (NEPA)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this

determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

A complete list of references cited in this rule is available on the Internet at <http://www.regulations.gov> under Docket No. FWS-R1-ES-2011-0098 and upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**, above).

**Authors**

The primary authors of this document are the staff members of the Pacific Islands Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—AMENDED**

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by adding entries for “Snail, Lanai tree” (*Partulina semicarinata*), “Snail, Lanai tree” (*Partulina variabilis*), and “Snail, Newcomb’s tree” (*Newcombia cumingi*), in alphabetical order under SNAILS, to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
Snail, Lanai tree	<i>Partulina semicarinata</i>	U.S.A. (HI)	NA	E	815	NA	NA
Snail, Lanai tree	<i>Partulina variabilis</i>	U.S.A. (HI)	NA	E	815	NA	NA
Snail, Newcomb’s tree	<i>Newcombia cumingi</i>	U.S.A. (HI)	NA	E	815	NA	NA

■ 3. Amend § 17.12(h), the List of Endangered and Threatened Plants, as follows:

■ a. By removing the entries for *Gahnia lanaiensis* and *Santalum freycinetianum* var. *lanaiense* under FLOWERING PLANTS;

■ b. By revising the entry for *Cyanea grimesiana* ssp. *grimesiana* under FLOWERING PLANTS; and

■ c. By adding entries for *Bidens campylothea* ssp. *pentamera*, *Bidens campylothea* ssp. *waihoiensis*, *Bidens conjuncta*, *Calamagrostis hillebrandii*,

*Canavalia pubescens*, *Cyanea asplenifolia*, *Cyanea duvalliorum*, *Cyanea horrida*, *Cyanea kunthiana*, *Cyanea magnicalyx*, *Cyanea maritae*, *Cyanea mauiensis*, *Cyanea munroi*, *Cyanea obtusa*, *Cyanea profuga*, *Cyanea solanacea*, *Cyrtandra ferripilosa*, *Cyrtandra filipes*, *Cyrtandra oxybapha*, *Festuca molokaiensis*, *Geranium hanaense*, *Geranium hillebrandii*, *Mucuna sloanei* var. *persericea*, *Myrsine vaccinioides*, *Peperomia subpetiolata*, *Phyllostegia bracteata*, *Phyllostegia*

*haliakalae*, *Phyllostegia pilosa*, *Pittosporum halophilum*, *Pleomele fernaldii*, *Santalum haleakalae* var. *lanaiense*, *Schiedea jacobii*, *Schiedea laui*, *Schiedea salicaria*, *Stenogyne kauaualaensis*, and *Wikstroemia villosa* in alphabetical order under FLOWERING PLANTS, to read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
<i>Bidens campylothea</i> ssp. <i>pentamera</i>	Kookoolau	U.S.A. (HI)	Asteraceae	E	815	NA	NA
<i>Bidens campylothea</i> ssp. <i>waihoiensis</i>	Kookoolau	U.S.A. (HI)	Asteraceae	E	815	NA	NA
<i>Bidens conjuncta</i>	Kookoolau	U.S.A. (HI)	Asteraceae	E	815	NA	NA
<i>Calamagrostis hillebrandii</i>	None	U.S.A. (HI)	Poaceae	E	815	NA	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Canavalia pubescens</i>	Awikiwiki	U.S.A. (HI)	Fabaceae	E	815	NA	NA
<i>Cyanea asplenifolia</i>	Haha	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyanea duvalliorum</i>	Haha	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyanea grimesiana</i> ssp. <i>grimesiana</i> .	Haha	U.S.A. (HI)	Campanulaceae	E	592, 815	17.99(c), (e)(1), and (j).	NA
<i>Cyanea horrida</i>	Haha nui	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyanea kunthiana</i>	Haha	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyanea magnicalyx</i>	Haha	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyanea maritae</i>	Haha	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyanea mauiensis</i>	Haha	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyanea munroi</i>	Haha	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyanea obtusa</i>	Haha	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyanea profuga</i>	Haha	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyanea solanacea</i>	Popolo	U.S.A. (HI)	Campanulaceae	E	815	NA	NA
<i>Cyrtandra ferripilosa</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	E	815	NA	NA
<i>Cyrtandra filipes</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	E	815	NA	NA
<i>Cyrtandra oxybapha</i>	Haiwale	U.S.A. (HI)	Gesneriaceae	E	815	NA	NA
<i>Festuca molokaiensis</i>	None	U.S.A. (HI)	Poaceae	E	815	NA	NA
<i>Geranium hanaense</i>	Nohoanu	U.S.A. (HI)	Geraniaceae	E	815	NA	NA
<i>Geranium hillebrandii</i>	Nohoanu	U.S.A. (HI)	Geraniaceae	E	815	NA	NA
<i>Mucuna sloanei</i> var. <i>persericea</i>	Sea bean	U.S.A. (HI)	Fabaceae	E	815	NA	NA
<i>Myrsine vaccinioides</i>	Kolea	U.S.A. (HI)	Myrsinaceae	E	815	NA	NA
<i>Peperomia subpetiolata</i>	Alaala wai nui	U.S.A. (HI)	Piperaceae	E	815	NA	NA
<i>Phyllostegia bracteata</i>	None	U.S.A. (HI)	Lamiaceae	E	815	NA	NA
<i>Phyllostegia haliakalae</i>	None	U.S.A. (HI)	Lamiaceae	E	815	NA	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
* <i>Phyllostegia pilosa</i> .....	* None .....	* U.S.A. (HI) .....	* Lamiaceae .....	* E .....	* 815	* NA .....	* NA
* <i>Pittosporum halophilum</i> .....	* Hoawa .....	* U.S.A. (HI) .....	* Pittosporaceae ...	* E .....	* 815	* NA .....	* NA
* <i>Pleomele fernaldii</i> .....	* Hala pepe .....	* U.S.A. (HI) .....	* Asparagaceae ...	* E .....	* 815	* NA .....	* NA
* <i>Santalum haleakalae</i> var. <i>lanaiense</i> .	* Lanai sandalwood or iliahi.	* U.S.A. (HI) .....	* Santalaceae .....	* E .....	* 215, 815	* NA .....	* NA
* <i>Schiedea jacobii</i> .....	* None .....	* U.S.A. (HI) .....	* Caryophyllaceae	* E .....	* 815	* NA .....	* NA
* <i>Schiedea laui</i> .....	* None .....	* U.S.A. (HI) .....	* Caryophyllaceae	* E .....	* 815	* NA .....	* NA
* <i>Schiedea salicaria</i> .....	* None .....	* U.S.A. (HI) .....	* Caryophyllaceae	* E .....	* 815	* NA .....	* NA
* <i>Stenogyne kauaulaensis</i> .....	* None .....	* U.S.A. (HI) .....	* Lamiaceae .....	* E .....	* 815	* NA .....	* NA
* <i>Wikstroemia villosa</i> .....	* Akia .....	* U.S.A. (HI) .....	* Thymelaeaceae	* E .....	* 815	* NA .....	* NA

\* \* \* \* \*

Dated: May 14, 2013.

**Stephen Guertin,***Deputy Director, U.S. Fish and Wildlife Service.*

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# Reader Aids

## Federal Register

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**H.R. 1071/P.L. 113-10**

To specify the size of the precious-metal blanks that will be used in the production of the National Baseball Hall of Fame commemorative coins. (May 17, 2013; 127 Stat. 445)  
**Last List May 3, 2013**

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