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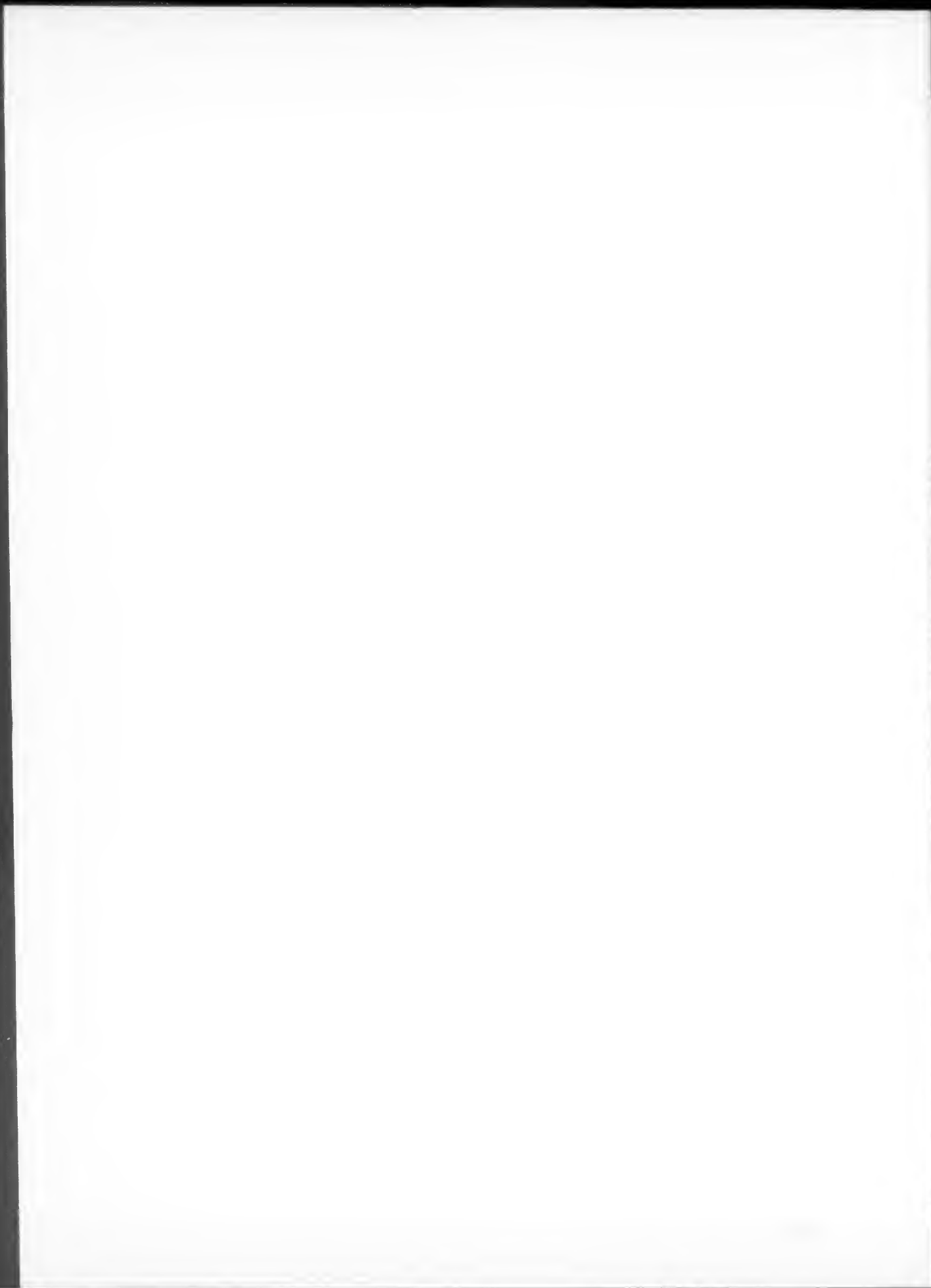
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Contents

Federal Register

Vol. 76, No. 186

Monday, September 26, 2011

Agriculture Department

See Food and Nutrition Service
See Food Safety and Inspection Service
See Natural Resources Conservation Service
See Rural Business-Cooperative Service

Air Force Department

NOTICES

Privacy Act; Systems of Records, 59389-59391

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Bonneville Power Administration

NOTICES

Records of Decisions; Availability:
Big Eddy-Knight Transmission Project, 59394

Bureau of Consumer Financial Protection

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Generic Clearance for Research in Development of Disclosure Forms, 59379

Centers for Medicare & Medicaid Services

RULES

Medicare Program:
Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals, etc.; Correction, 59263-59265
Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2012, etc.; Correction, 59256-59263
Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2012; Correction, 59265-59266

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Responsible Fatherhood Reentry Strategies Study - Discussion Guides, 59399-59400

Commerce Department

See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission

RULES

Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index:
Commission Certification Procedures, 59241-59247

Defense Department

See Air Force Department
See Navy Department

NOTICES

Meetings:
Board of Regents of Uniformed Services University of Health Sciences, 59388
Department of Defense Military Family Readiness Council, 59388-59389

Employee Benefits Security Administration

NOTICES

Exemptions from Certain Prohibited Transaction Restrictions, 59426-59434
Proposed Exemptions from Certain Prohibited Transaction Restrictions, 59434-59445
Proposed Exemptions from Certain Prohibited Transaction Restrictions; Withdrawal, 59445-59446

Energy Department

See Bonneville Power Administration
See Energy Efficiency and Renewable Energy Office

NOTICES

Meetings:
Environmental Management Site-Specific Advisory Board, Nevada, 59393
Environmental Management Site-Specific Advisory Board, Northern New Mexico, 59392-59393
Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation, 59393-59394

Energy Efficiency and Renewable Energy Office

NOTICES

Energy Conservation Program for Consumer Products:
Samsung Electronics America, Inc.; Extension of Interim Waiver from Residential Refrigerator and Refrigerator-Freezer Test Procedure, 59394-59395

Environmental Protection Agency

RULES

Approvals and Promulgations of Air Quality Implementation Plans:
Maryland; Transportation Conformity Regulations, 59252-59254
North Carolina; Clean Smokestacks Act, 59250-59252
Interim Final Determination to Stay and Defer Sanctions: San Joaquin Valley Unified Air Pollution Control District, 59254-59256

PROPOSED RULES

Approvals and Promulgations of Air Quality Implementation Plans:
Maryland; Transportation Conformity Regulations, 59344
Montana; Revisions to Administrative Rules - Air Quality, Exclusion for De Minimis Changes, 59338-59344
New Mexico; Albuquerque/Bernalillo County; Prevention of Significant Deterioration, Greenhouse Gas Tailoring Rule Revisions, 59334-59338
Approvals and Promulgations of Implementation Plans; Designation of Areas for Air Quality Planning Purposes:
Redesignation of Greensboro-Winston-Salem-High Point, NC, 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment, 59345-59361

NOTICES

Data Transfers:
Primus Solutions, Inc., 59395
Meetings:
Farm, Ranch, and Rural Communities Committee, 59396
Webcast of Environmental Financial Advisory Board, 59395-59396

Executive Office of the President

See Presidential Documents

Federal Aviation Administration**RULES**

Airworthiness Directives;

Empresa Brasileira de Aeronautica S.A. Airplanes, 59240-59241

PROPOSED RULES

Establishments of Class D and E Airspace; Amendments of Class E Airspace:

Punta Gorda, FL, 59306-59307

NOTICES

Meetings:

Air Traffic Procedures Advisory Committee, 59481-59482
RTCA Special Committee 135; Environmental Conditions and Test Procedures for Airborne Equipment, 59481
RTCA Special Committee 224; Airport Security Access Control Systems, 59481**Federal Communications Commission****RULES**

Structure and Practices of the Video Relay Service Program, 59269-59271

Federal Emergency Management Agency**RULES**Changes in Flood Elevation Determinations, 59268-59269
Suspensions of Community Eligibility, 59266-59268**PROPOSED RULES**

Flood Elevation Determinations, 59361-59371

Federal Railroad Administration**NOTICES**

Petitions for Waivers of Compliance, 59482

Federal Reserve System**RULES**

Equal Credit Opportunity, 59237-59239

NOTICES

Changes in Bank Control:

Acquisitions of Shares of Bank or Bank Holding Company, 59396

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 59396-59397

Federal Trade Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59397-59399

Fish and Wildlife Service**RULES**

2011-2012 Refuge-Specific Hunting and Sport Fishing Regulations:

Correction, 59304

Migratory Bird Hunting:

Hunting on Certain Federal Indian Reservations and Ceded Lands for the 2011-12 Late Season, 59298-59304

Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds, 59271-59298

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Alaska Guide Service Evaluation, 59420-59421
Approval Procedures for Nontoxic Shot and Shot Coatings, 59421-59422

Horseshoe Crab Tagging Program, 59422-59423

National Mourning Dove Hunter Attitude Survey on Nontoxic Shot, 59419-59420

Food and Drug Administration**RULES**

Environmental Impact Considerations, Food Additives, and Generally Recognized as Safe Substances: Technical Amendments, 59247-59250

NOTICESAgency Information Collection Activities; Proposals, Submissions, and Approvals: Certification to Accompany Drug, Biological Product, and Device Applications or Submissions, 59401-59404
Requests for Inspection Under the Inspection by Accredited Persons Program, 59400-59401

Meetings:

Allergenic Products Advisory Committee, 59406-59407
Anti-Infective Drugs Advisory Committee, 59405-59406
Gastrointestinal Drugs Advisory Committee, 59404-59405
Report and Information on Non-Standardized Allergenic Extracts in Diagnosis and Treatment of Allergic Disease; Availability, 59407-59408
Statement of Organizations, Functions, and Delegations of Authority, 59408-59410**Food and Nutrition Service****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals: National Universal Product Code Database, 59379-59381

Food Safety and Inspection Service**NOTICES**

Meetings:

Codex Alimentarius Commission: Codex Committee on Food Hygiene, 59381-59382

Foreign Assets Control Office**NOTICES**Additional Designations, Foreign Narcotics Kingpin Designation Act, 59483-59488
Additions to Identifying Information for Individuals Previously Designated Pursuant to Executive Order 12978, 59488
Designation of Three Individuals Pursuant to Executive Order 13224, 59488-59489**Health and Human Services Department**

See Centers for Medicare & Medicaid Services

See Children and Families Administration

See Food and Drug Administration

See Health Resources and Services Administration

See National Institutes of Health

NOTICES

Statements of Organization, Functions and Delegations of Authority, 59399

Health Resources and Services Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59410

Homeland Security Department

See Federal Emergency Management Agency

NOTICES

Meetings:

Towing Safety Advisory Committee, 59415-59416

Senior Executive Service Performance Review Board;
Membership, 59416–59418

Interior Department

See Fish and Wildlife Service

See National Park Service

See Surface Mining Reclamation and Enforcement Office

NOTICES

Meetings:

Wildland Fire Executive Council, 59418–59419

Internal Revenue Service

PROPOSED RULES

User Fees:

Registered Tax Return Preparer Competency Examination and Fingerprinting Participants, etc., 59329–59334

International Trade Administration

NOTICES

Antidumping Duty Orders; Preliminary Results of Third Five-Year Reviews:

Brass Sheet and Strip from Germany, 59386–59387

International Trade Commission

NOTICES

Termination of Investigations:

Certain Digital Set-Top Boxes and Components Thereof, 59425

Justice Department

NOTICES

Lodgings of Consent Decrees under Clean Air Act, 59425–59426

Labor Department

See Employee Benefits Security Administration

National Aeronautics and Space Administration

NOTICES

Meetings:

Science Committee, 59446

National Archives and Records Administration

NOTICES

Records Schedules:

Availability and Request for Comments, 59446–59447

National Foundation on the Arts and the Humanities

NOTICES

Meetings:

Arts Advisory Panel, National Endowment for Arts, 59447–59448

National Institutes of Health

NOTICES

Government-Owned Inventions; Availability for Licensing, 59410–59413

Meetings:

Center for Scientific Review, 59413, 59415

Eunice Kennedy Shriver National Institute of Child Health and Human Development, 59415

National Cancer Institute, 59413

National Institute of Neurological Disorders and Stroke, 59414

National Institute of Nursing Research, 59413–59414

National Institute on Drug Abuse, 59414–59415

National Oceanic and Atmospheric Administration

RULES

Titles of Officials, Office Names, and References, 59304–59305

PROPOSED RULES

Fisheries of Caribbean, Gulf of Mexico, and South Atlantic: Comprehensive Ecosystem-Based Amendment 2, 59371–59373

Generic Annual Catch Limits/Accountability Measures Amendment for Gulf of Mexico, 59373–59374

Queen Conch and Reef Fish Fishery Management Plans of Puerto Rico and U.S. Virgin Islands, 59375–59377

Fishery Management Plans of Puerto Rico and U.S. Virgin Islands:

Reef Fish, Spiny Lobster, Queen Conch and Coral and Reef Associated Plants and Invertebrates, 59377–59378

NOTICES

Meetings:

South Atlantic Fishery Management Council, 59387–59388

National Park Service

NOTICES

Environmental Impact Statements; Availability, etc.:

Drakes Bay Oyster Co. Special-use Permit, Point Reyes National Seashore, CA, 59423–59424

Natural Resources Conservation Service

NOTICES

Proposed Change to Section IV of the Virginia State Technical Guide, 59382–59383

Navy Department

NOTICES

Government-Owned Inventions; Available for Licensing, 59391–59392

Intents to Grant Exclusive Patent Licenses:

Enhanced Energy Group, LLC., 59392

Nuclear Regulatory Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59448

Draft Regulatory Guides; Issuance, Availability, 59448–59449

Meetings:

Advisory Committee On Reactor Safeguards, 59449–59450

Postal Regulatory Commission

NOTICES

Meetings; Sunshine Act, 59450–59451

Post Office Closings, 59451–59454

Presidential Documents

PROCLAMATIONS

Special Observances:

National Hispanic-Serving Institution Week (Proc. 8718), 59499–59500

ADMINISTRATIVE ORDERS

Narcotics and Drugs; Major Illicit Transit or Producing Countries (Presidential Determination)

No. 2011–16 of September 15, 2011, 59495–59497

Palestinian Authority; Waiver of Restriction on Providing Funds (Presidential Determination)

No. 2011–14 of August 30, 2011, 59491–59493

Railroad Retirement Board**NOTICES**

Meetings; Sunshine Act, 59454

Rural Business-Cooperative Service**NOTICES**

Funds Availabilities; Fiscal Year 2011:

Rural Microentrepreneur Assistance Program, 59383-59386

Securities and Exchange Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59454-59455

Applications:

ASGI Agility Income Fund, et al., 59456-59458

Curian Series Trust and Curian Capital, LLC, 59455-59456

Stone Harbor Emerging Markets Income Fund, et al., 59458-59462

Self-Regulatory Organizations; Proposed Rule Changes:

BATS Exchange, Inc., 59472-59476

BATS Y-Exchange, Inc., 59462-59466

C2 Options Exchange, Inc., 59470-59472

Chicago Stock Exchange, Inc., 59476-59478

International Securities Exchange, Inc., 59472

NASDAQ Stock Market LLC, 59466-59470

Small Business Administration**NOTICES****Disaster Declarations:**

Maryland, 59478-59479

Montana; Amendment 2, 59479-59480

New Jersey, 59479

Texas; Amendment 2, 59480

Vermont; Amendment 3, 59479

Vermont; Amendment 5, 59479

Meetings:

Region II Buffalo District Advisory Council, 59480

Surrender of License of Small Business Investment Company, 59480

Surface Mining Reclamation and Enforcement Office**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59424-59425

Surface Transportation Board**NOTICES****Exemptions:**

Maine Northern Railway Co., et al., 59482-59483

Quarterly Rail Cost Adjustment Factor, 59483

Transportation Department

See Federal Aviation Administration

See Federal Railroad Administration

See Surface Transportation Board

PROPOSED RULES

Nondiscrimination on Basis of Disability in Air Travel:

Accessibility of Web Sites and Automated Kiosks at U.S. Airports, 59307-59328

Treasury Department

See Foreign Assets Control Office

See Internal Revenue Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59483

Separate Parts In This Issue**Part II**

Presidential Documents, 59491-59493, 59495-59497, 59499-59500

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

8718.....59499

Administrative Orders:

Presidential

Determinations:

No. 2011-14 of August

30, 2011.....59493

No. 2011-16 of

September 15,

2011.....59495

12 CFR

202.....59237

14 CFR

39.....59240

Proposed Rules:

71.....59306

382.....59307

17 CFR

30.....59241

21 CFR

25.....59247

173.....59247

175.....59247

177.....59247

178.....59247

182.....59247

184.....59247

26 CFR**Proposed Rules:**

300.....59329

40 CFR52 (3 documents)59250,
59252, 59254**Proposed Rules:**52 (4 documents)59334,
59338, 59344, 59345

81.....59345

42 CFR412 (2 documents)59256,
59263413 (2 documents)59263,
59265

476.....59263

44 CFR

64.....59266

65.....59268

Proposed Rules:

67.....59361

47 CFR

64.....59269

49 CFR**Proposed Rules:**

27.....59307

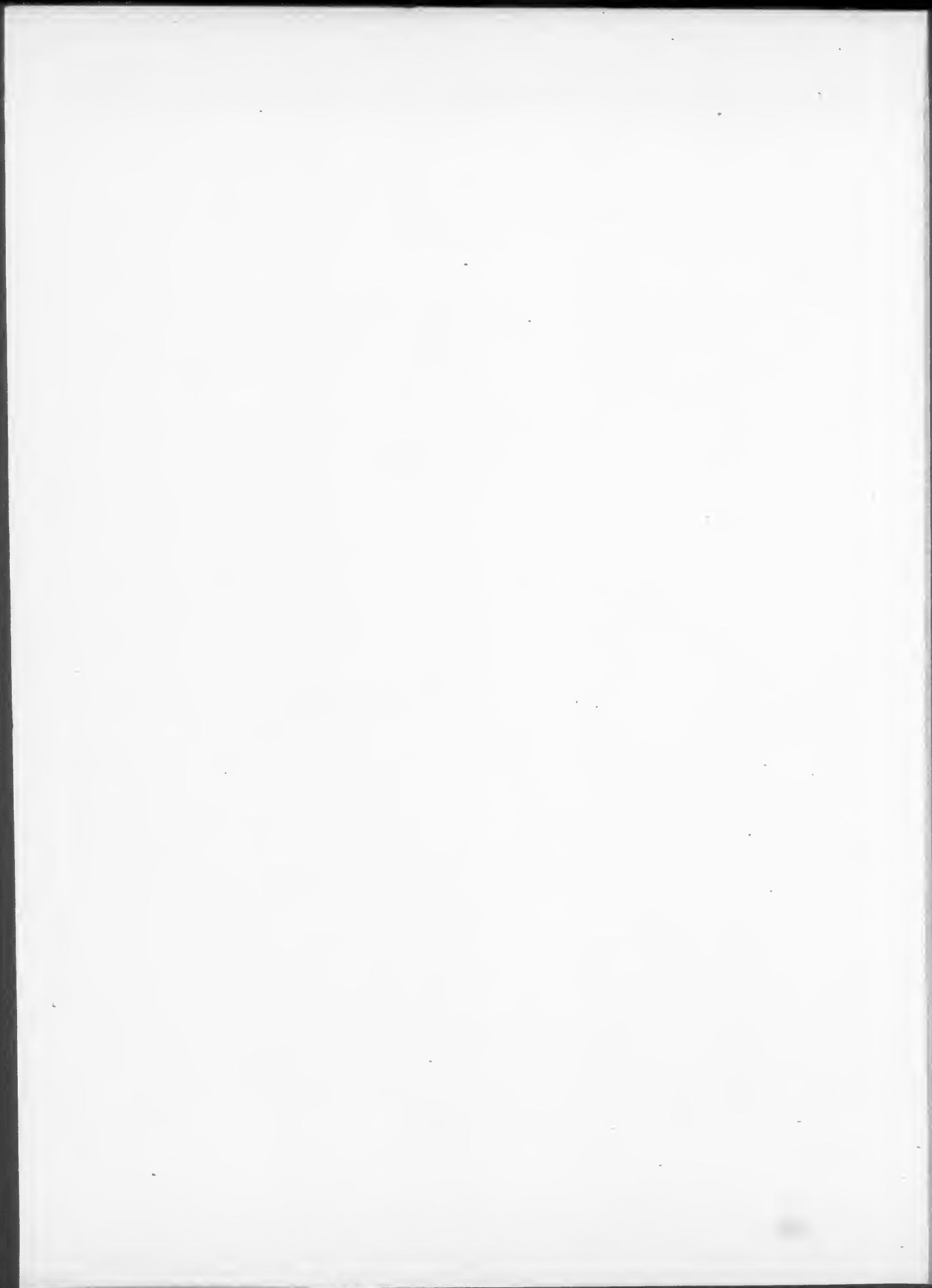
50 CFR20 (2 documents)59271,
59298

32.....59304

300.....59304

600.....59304

Proposed Rules:622 (4 documents)59371,
59373, 59375, 59377



Rules and Regulations

Federal Register

Vol. 76, No. 186

Monday, September 26, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-1426]

RIN 7100 AD 78

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule amending Regulation B (Equal Credit Opportunity). Section 704B of the Equal Credit Opportunity Act (ECOA), as added by Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act), requires that financial institutions collect and report information concerning credit applications made by women or minority-owned businesses and by small businesses. ECOA Section 704B became effective on the date that general rulemaking authority for ECOA was transferred to the Consumer Financial Protection Bureau (CFPB or Bureau), which was July 21, 2011. Although the CFPB has the authority to issue rules to implement ECOA Section 704B for most entities, the Board retains authority to issue rules for certain motor vehicle dealers. This final rule excepts motor vehicle dealers subject to the Board's jurisdiction from the requirements of ECOA Section 704B until the effective date of final rules issued by the Board to implement that provision.

DATES: This final rule is effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Lorna Neill or Nikita Pastor, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For users of

Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

Section 704B of ECOA, as added by Section 1071 of the Dodd-Frank Act, requires that financial institutions collect and report information concerning credit applications made by women or minority-owned businesses and by small businesses. 15 U.S.C. 1691c-2. The statute directs financial institutions to compile and maintain the data "in accordance with regulations of the Bureau." ECOA Section 704B(e)(1), 15 U.S.C. 1691c-2(e)(1). The purpose of Section 704B is "to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses." ECOA Section 704B became effective on the date that rulemaking authority for ECOA transferred to the CFPB, which was July 21, 2011.

On April 11, 2011, the CFPB issued a letter concluding that financial institutions have no obligations under Section 704B until the CFPB issues regulations to implement the requirements.¹ The CFPB letter notes that Congress intended Section 704B to produce reliable and consistent data that can be analyzed by the CFPB, other government agencies, and members of the public to facilitate enforcement of fair lending laws and to identify business and community development needs. Based on the statutory text, purpose, and legislative history, the CFPB letter concludes that implementing regulations are necessary to ensure that data are collected and reported in a consistent, standardized fashion that allows for sound analysis by the CFPB and other users of the data.

Although the CFPB has authority to issue rules to implement ECOA (including data collection under Section 704B) for most entities, the Board retains authority to issue rules under ECOA for motor vehicle dealers covered

by Section 1029(a) of the Dodd-Frank Act.² Thus, the Board is responsible for issuing regulations to implement the amendments made by Section 704B for motor vehicle dealers covered by Section 1029(a). Consequently, the Board has received inquiries as to whether motor vehicle dealers must comply with the requirements of ECOA Section 704B before implementing regulations are issued.

The Board believes that detailed rules to implement ECOA Section 704B are necessary to ensure that data collected and reported under that provision are useful. As noted, the purposes of the statute are to facilitate fair lending enforcement and to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses. To support sound analysis by users of the data, the data should be collected and reported by motor vehicle dealers in a consistent and standardized way. To achieve this, implementing rules can provide motor vehicle dealers with uniform definitions and standards that they can follow in collecting and reporting data.

For these reasons, on June 23, 2011, the Board published for public comment a proposed rule to except motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act from any obligation to comply with ECOA Section 704B until the Board issues final regulations to implement that provision and those regulations become effective. The proposed rule was consistent with the views expressed by the CFPB, and was

² Section 1029(a) of the Dodd-Frank Act states: "Except as permitted in subsection (b), the Bureau may not exercise any rulemaking * * * authority * * * over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both." 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act states: "Subsection (a) shall not apply to any person, to the extent such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transaction involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are [sic] provided directly to consumers and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service." 12 U.S.C. 5519(b).

¹ See Letter from Leonard J. Kennedy, General Counsel, CFPB, to Chief Executive Officers of Financial Institutions under Section 1071 of the Dodd-Frank Act, <http://www.consumerfinance.gov/wp-content/uploads/2011/04/GC-letter-re-1071.pdf> (Apr. 11, 2011).

supported by the text and purpose of Section 1071 of the Dodd-Frank Act. The applicability of the proposed rule was limited to Section 1071 and would not affect the implementation date of any other provision of the Dodd-Frank Act.

The Board received five comment letters in response to the June 2011 proposal. All of the commenters generally supported the proposed rule. For the reasons discussed below, the Board is adopting the June 2011 proposal as a final rule without changes.

II. Legal Authority

ECOA Section 703, as amended by Section 1085 of the Dodd-Frank Act, directs the Board to prescribe regulations to carry out ECOA's purposes for motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act. See 15 U.S.C. 1691b(f). In addition, the Board's general rulemaking under ECOA includes authority to issue regulations that contain such classifications, differentiation, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion of ECOA, or to facilitate or substantiate compliance with ECOA. *Id.* Finally, ECOA Section 704B(g)(2) contains authority for exceptions or exemptions for any class of financial institutions as deemed necessary or appropriate to carry out the purposes of Section 704B. 15 U.S.C. 1691c-2(g)(2).

Pursuant to this authority, the final rule exempts motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act from the requirement to comply with ECOA Section 704B until the effective date of final rules issued by the Board to implement Section 704B. The Board believes that this exception is necessary to effectuate the purposes of ECOA and facilitate compliance. First, as noted, ECOA Section 704B states that its purpose is "to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses." 15 U.S.C. 1691c-2(a). The Board believes that this purpose is better served if detailed rules prescribe the method for collecting and reporting data under Section 704B. The collection of data in a uniform manner under a final regulation will enhance data analysis and enforcement capabilities. Second, in directing that financial

institutions compile and maintain the data "in accordance with regulations of the Bureau," the text of ECOA Section 704B clearly contemplates that regulations are necessary to implement this provision.³ Finally, delaying data collection until there are implementing regulations will facilitate compliance by providing guidance on how motor vehicle dealers can comply with the statutory requirements in a manner that effectuates the legislative purposes.

Effective Date

This final rule is effective upon publication in the **Federal Register**. The Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.*, generally requires that rules be published not less than 30 days before their effective date. See 5 U.S.C. 553(d). However, the APA provides exceptions to this timing requirement for certain rules. For the reasons discussed below, the Board believes that the final rule meets the requirements for an exception to the APA's general 30-day notice requirement.

Specifically, the APA's 30-day notice requirement does not apply to "a substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1). As explained above, the final rule temporarily relieves motor vehicle dealers covered under Section 1029(a) of the Dodd-Frank Act from the statutory obligation under ECOA Section 704B to collect and report data on credit applications made by women- and minority-owned businesses and small businesses. The rule therefore grants a temporary exemption from a statutory obligation that might otherwise apply.

In addition, the APA's 30-day notice rule does not apply when "otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The Board finds that there is good cause to make this final rule effective immediately because Section 704B has already become effective and the text of the statute clearly contemplates that regulations are necessary to implement the law's requirements. For the reasons discussed above, the Board believes that regulations are necessary to effectuate the purposes of Section 704B and that motor vehicle dealers should be excepted from the statutory requirements until such rules are in effect.

³ See ECOA Section 704B(e)(1), 15 U.S.C. 1691c-2(e)(1) ("Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information provided by any loan applicant * * *").

III. Summary of Comments Received

The Board received five comment letters in response to the proposed rule. Two letters were received from trade associations that represent motor vehicle dealers, vehicle manufacturers and other automotive-related companies. One letter was received from a trade association that represents finance companies and other financial institutions that provide consumer and commercial credit. Comment letters were also received from a public policy advocacy organization and a research and consulting firm that focuses on women- and minority-owned financial institutions and investments in minority businesses.

All of the comment letters generally supported the Board's proposal to exempt motor vehicle dealers from the requirements of Section 704B until the effective date of final rules issued by the Board to implement that provision. Three commenters expressly urged the Board to consult and coordinate with the CFPB in developing substantive rules under Section 704B so that the rules issued by both agencies will be uniform and consistent. The consumer advocacy organization that commented also urged the Board to issue rules implementing the data collection requirements as quickly as possible so that motor vehicle dealers can comply as soon as the CFPB's rules for other creditors become effective.

IV. Section-by-Section Analysis

Section 202.17 Data Collection for Credit Applications by Women-Owned, Minority-Owned, or Small Businesses

17(a) Effective Date for Motor Vehicle Dealers

Section 704B of ECOA requires that financial institutions collect and report information concerning credit applications made by women or minority-owned businesses and by small businesses. 15 U.S.C. 1691c-2. This section of ECOA became effective on the designated transfer date, which was July 21, 2011. The term "financial institution" includes any entity that engages in any financial activity. 15 U.S.C. 1691c-2(h)(1). The term "financial activity" is not defined in ECOA or the Dodd-Frank Act, but motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act might be engaged in "financial activity" and therefore might be financial institutions subject to the requirements of ECOA Section 704B.

For the reasons discussed above, the Board is adopting Section 202.17(a) as proposed to provide that no motor

vehicle dealer covered by Section 1029(a) of the Dodd-Frank Act is required to comply with the requirements of Section 704B of ECOA until the effective date of final rules issued by the Board to implement Section 704B. In addition, the final rule specifies that Section 202.17(a) shall not be construed to affect the effective date of ECOA Section 704B for any person other than a motor vehicle dealer covered by Section 1029(a) of the Dodd-Frank Act.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3506, 5 CFR part 1320 Appendix A.1, the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information under the PRA. See 44 U.S.C. 3502(3). Accordingly, no paperwork burden is associated with the rule.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires an agency to perform an initial and final regulatory flexibility analysis on the impact a rule is expected to have on small entities. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.⁴ For example, to be considered a small business under the SBA size standard, a new car dealer must have 200 or fewer employees and a used car dealer must have \$23 million or less in annual revenues.

Under Section 605(b) of the RFA, 5 U.S.C. 605(b), the initial regulatory flexibility analysis otherwise required under Section 603 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its initial and final analysis and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

A. Statement of Reasons, Objectives, and Legal Basis for the Final Rule

Section 704B of ECOA, as added by Section 1071 of the Dodd-Frank Act, requires that financial institutions

collect and report information concerning credit applications made by women or minority-owned businesses and by small businesses. ECOA Section 704B became effective on the date that rulemaking authority for ECOA was transferred to the CFPB, which was July 21, 2011. Although the CFPB has the authority to issue rules to implement ECOA Section 704B for most entities, the Board retains authority to issue rules for certain motor vehicle dealers. This final rule excepts motor vehicle dealers that are subject to the Board's jurisdiction from the requirements of ECOA Section 704B temporarily, until the effective date of final rules that will be issued by the Board to implement that provision. The **SUPPLEMENTARY INFORMATION** above contains information on the reasons, objectives and legal basis for the proposed rule.

B. Summary of the Significant Issues Raised by Public Comment on the Board's Initial Analysis of Issues, and a Statement of Any Changes Made as a Result

No public comments on the proposed rule addressed matters relating to the Board's initial regulatory flexibility analysis.

C. Small Entities Affected by the Final Rule

The final rule applies to motor vehicle dealers covered by Section 1029(a) of the Dodd-Frank Act. The total number of small entities covered by the final rules is unknown, because the Board does not have data on the number of small entities that are motor vehicle dealers covered by Section 1029(a). Furthermore, it is unclear how many motor vehicle dealers covered by Section 1029(a) receive credit applications from women- or minority-owned businesses or small businesses. Nevertheless, no small entities are likely to be affected by the final rule because the rule merely preserves the status quo by granting a temporary exemption from the requirement to comply with the statute, which took effect on July 21, 2011.

D. Recordkeeping, Reporting, and Compliance Requirements

The final rule will not impose any new recordkeeping, reporting, or compliance requirements. Instead, the final rule temporarily will delay these requirements until the Board issues final implementing regulations and the regulations become effective.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the final rule.

F. Significant Alternatives to the Regulatory Revisions

The Board is not aware of any significant alternatives that would minimize any significant economic impact of the final rule on small entities. Commenters did not suggest any alternatives.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation B, 12 CFR part 202, as follows:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

- 1. The authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 1691–1691f; Pub. L. 111–203, 124 Stat. 1376.

- 2. Add § 202.17 to read as follows:

§ 202.17 Data collection for credit applications by women-owned, minority-owned, or small businesses.

No motor vehicle dealer covered by section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5519(a), shall be required to comply with the requirements of section 704B of the Equal Credit Opportunity Act, 15 U.S.C. 1691c-2, until the effective date of final rules issued by the Board to implement section 704B of the Act, 15 U.S.C. 1691c-2. This paragraph shall not be construed to affect the effective date of section 704B of the Act for any person other than a motor vehicle dealer covered by section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

By order of the Board of Governors of the Federal Reserve System, September 16, 2011.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 2011–24300 Filed 9–23–11; 8:45 am]

BILLING CODE 6210-01-P

⁴ U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2011-0713; Directorate Identifier 2011-CE-023-AD; Amendment 39-16810; AD 2011-20-01]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Model EMB-505 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found the possibility of free-play between the mass balance weight and the elevator structure. This condition if not corrected could lead to elevator flutter and possible loss of airplane control.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 31, 2011.

On October 31, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

For service information identified in this AD, contact EMBRAER S.A., Phenom Maintenance Support, Av. Brig. Faria Lima, 2170, Sao Jose dos Campos-SP, CEP: 12227-901—PO Box: 36/2, Brasil; telephone: ++55 12 3927-5383; fax: ++55 12 3927-2619; E-mail: phenom.reliability@embraer.com.br; Internet: <http://www.embraer.com.br>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of

this material at the FAA, call (816) 329-4148.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4165; fax: (816) 329-4090; e-mail: jim.rutherford@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the *Federal Register* on July 8, 2011 (76 FR 40286). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found the possibility of free-play between the mass balance weight and the elevator structure. This condition if not corrected could lead to elevator flutter and possible loss of airplane control.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 40286, July 8, 2011) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 8 products of U.S. registry. We also estimate that it will take about 38 work-hours per product to comply with the

basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$3,490 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be \$53,760, or \$6,720 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 40286, July 8, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011-20-01 Empresa Brasileira de Aeronáutica S.A. (EMBRAER): Amendment 39-16810; Docket No. FAA-2011-0713; Directorate Identifier 2011-CE-023-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 31, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Model EMB-505 airplanes, all serial numbers (SN) through 50500023, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the possibility of free-play between the mass balance weight and the elevator structure. This condition if not corrected could lead to elevator flutter and possible loss of airplane control.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus,

sufficient reason exists to request compliance with this AD in the indicated time limit.

The MCAI requires replacement of the bolts that attach the balance mass weights to the elevator structure.

Actions and Compliance

(f) Unless already done, within 12 calendar months after October 31, 2011 (the effective date of this AD), replace the bolts that attach the balance mass weights to the elevator structure following EMBRAER S.A. Phenom Service Bulletin No.: 505-55-0002, dated January 14, 2011.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI applies to SN 50500004 through 50500023. This AD applies to all SN through 50500023.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4165; fax: (816) 329-4090; e-mail: jim.rutherford@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES-200.

Related Information

(h) Refer to MCAI Agência Nacional de Aviação Civil—Brazil (ANAC) AD No.: 2011-

05-05, effective date June 16, 2011; and EMBRAER S.A. Phenom Service Bulletin No.: 505-55-0002, dated January 14, 2011, for related information. For service information related to this AD, contact EMBRAER S.A., Phenom Maintenance Support, Av. Brig. Faria Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227-901—PO Box: 36/2, Brasil; telephone: ++55 12 3927-5383; fax: ++55 12 3927-2619; E-mail: Phenom.Reliability@Embraer.Com.Br; Internet: <http://www.embraer.com.br>. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Material Incorporated by Reference

(i) You must use EMBRAER S.A. Phenom Service Bulletin No.: 505-55-0002, dated January 14, 2011, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact EMBRAER S.A., Phenom Maintenance Support, Av. Brig. Faria Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227-901—PO Box: 36/2, Brasil; telephone: ++55 12 3927-5383; fax: ++55 12 3927-2619; E-mail: phenom.reliability@embraer.com.br; Internet: <http://www.embraer.com.br>.

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

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

Issued in Kansas City, Missouri, on September 12, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011-23768 Filed 9-23-11; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 30**

RIN 3038-AC54

Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index; Commission Certification Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting a new rule, which establishes a Commission certification procedure applicable to the offer or sale, to persons in the U.S., of a non-narrow-based security index futures contract traded on a foreign board of trade; the new certification procedure will replace the existing staff no-action process. Additionally, the new rule establishes a procedure for a foreign board of trade to request and receive a Commission certification on an expedited basis. Under this expedited procedure, a non-narrow-based security index futures contract of qualifying foreign boards of trade could be offered or sold in the U.S. forty-five (45) days after submission of such request, absent a notification by the Commission.

DATES: *Effective Date:* October 26, 2011.

FOR FURTHER INFORMATION CONTACT:

Harold L. Hardman, Deputy General Counsel (Regulation), (202) 418-5120, hhardman@cftc.gov; Carlene S. Kim, Assistant General Counsel, (202) 418-5613, ckim@cftc.gov, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:**I. Introduction****A. Background**

Currently, a non-narrow-based security index futures contract ("foreign security index futures contract") traded on, or subject to the rules of, a foreign board of trade may be offered or sold to persons located within the United States pursuant to a staff no-action letter confirming that the contract satisfies the requirements enumerated in section 2(a)(1)(C)(ii) of the Commodity Exchange Act (the "CEA" or "Act") (such letter hereinafter referred to as a "Foreign Security Index No-Action Letter").¹ On December 13, 2010, the Commission published in the **Federal Register** a proposal to adopt new rule 30.13, which would establish Commission certification procedures for confirming that a security index futures contract traded on a foreign board of trade meets the requirements of the Act and therefore, may lawfully be offered or sold within the U.S.² The Commission received six comment

¹ 7 U.S.C. 2(a)(1)(C)(ii). Such a contract also is referred to herein as "non-narrow-based security index futures contract" or "broad-based security index futures contract."

² See 75 FR 77588, Dec. 13, 2010 (the "Proposal").

letters in response to the Proposal.³ Three commenters, two foreign boards of trade and a proprietary capital management firm, expressed strong support for proposed rule 30.13.⁴

Eurex also recommended that the new rule provide for a foreign board of trade to list a new contract with prior notification, in lieu of filing a request for certification, in certain limited circumstances.⁵ To address such comment, the Commission is providing in rule 30.13 that a foreign board of trade may make available for offer or sale to U.S. customers a new contract in reliance upon a previously-issued Foreign Security Index No-Action Letter or Commission certification where the new contract is: (i) Based on an index that was the subject of such prior no-action relief or certification issued to that board; and (ii) "substantially identical" to the contract overlying such index.

B. Proposed Rule 30.13: Commission Certification Procedure

Rule 30.13 sets forth a procedure whereby a foreign board of trade may apply to the Commission for certification that a security index futures contract traded on, or subject to, that board conforms to the criteria enumerated in section 2(a)(1)(C)(ii) of the Act. The Commission certification procedure will be available to futures contracts based on a non-narrow-based index of foreign or U.S. securities.⁶ Under this new procedure, the foreign board of trade seeking Commission certification must file with the Commission a written submission requesting certification with respect to their security index futures contract(s). Such submission must include data, information, facts, and statements complying with the form and content requirements set forth in paragraph (a)(2) of rule 30.13.⁷ In addition, the

³ Comments were submitted by Eurex Deutschland ("Eurex"); BM&FBovespa; INFINIUM Capital Management; and three private citizens.

⁴ The private individuals' comments related to speculation in the futures markets and did not address the proposed rule.

⁵ Eurex's comment is discussed in section I.D., *infra*.

⁶ See, e.g., CFTC Staff Letter No. 06-22 [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,366 (Sept. 26, 2006) (no-action relief granted with respect to futures contracts based on the Hang Seng Index and the Hang Seng China Enterprises Index, both of which are indices comprised wholly of foreign securities); CFTC Staff Letter No. 02-81 [2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,094 (June 28, 2002) (no-action relief granted with respect to futures contracts based on the Dow Jones Global Titan Index, which is an index comprised partially of U.S. securities).

⁷ The data, information, facts, and statements required to be submitted will be the same as that specified in current Appendix D to part 30.

foreign board of trade also must provide a written statement that the subject contract conforms to section 2(a)(1)(C)(ii) of the Act. Finally, the foreign board of trade must describe the manner in which U.S. persons legally may access these products on that board of trade (e.g., access through omnibus accounts, through an intermediary, which is registered in the U.S. and also is an authorized member of the foreign board of trade, or through an entity that has relief from registration under part 30).⁸

The substantive review will remain the same under rule 30.13 as it is under the current staff no-action process. Further, consistent with the existing staff no-action review process the Commission's review of the subject contract will not be subject to any specific time frame, except as noted below. If a contract is determined to conform to the applicable requirements of the Act, the Commission will so notify the foreign board of trade.⁹

Finally, foreign boards of trade that have received Foreign Security Index No-Action Letters prior to the effective date of rule 30.13 will be grandfathered, provided that the board submits a written statement representing that it remains fully compliant with the underlying conditions of the subject letter.¹⁰ Accordingly, a foreign board of

Specifically, the information required to be submitted would include: A copy of the contract's terms and conditions; relevant rules that may have an effect on trading of the contract such as circuit breakers or position limits or other controls on trading; information and data relating to the index, including the design, computation and maintenance thereof. In addition, the foreign board of trade would be required to provide a copy of the surveillance agreement(s) between the foreign board of trade and the exchange(s) on which the underlying securities are traded and provide assurance of its ability and willingness to share information with the Commission. The Commission requests that the required data relating to the index, including the index components and their market capitalizations, index weights, and average daily trading volumes (by share and by dollar value) over a six month period, be submitted in a Microsoft Excel file with an extension of .xls or .xlsx, as appropriate. In this final rulemaking, Appendix D will be revised to retain only the information currently set forth in paragraph G of Appendix D.

⁸ While an index product may meet the statutory standard and is therefore eligible to be offered or sold in the U.S., U.S. customers' access to such product may be restricted due to legal restrictions in the subject foreign jurisdiction.

⁹ Additionally, once the Commission has certified the subject futures contracts, no further action is required by the Commission or staff in order for options on such futures contract to be offered and sold in the United States. See 61 FR 10891, Mar. 18, 1996.

¹⁰ The Commission staff previously determined that such non-narrow-based foreign index contracts conformed to section 2(a)(1)(C)(ii) of the Act. Given that the substance of the review under the proposed Commission certification process would remain unchanged, the Commission believes it would be appropriate to "grandfather" these contracts.

trade that has received from Commission staff such no-action letters will be able to rely on such relief, in lieu of obtaining new Commission certification (for the contract that is the subject of that letter).

C. Expedited Review for Qualifying Foreign Boards of Trade

The new rule establishes a procedure for a foreign board of trade to request and receive a Commission certification on an expedited basis. This expedited procedure is an alternative to the regular review procedure and will be available to a foreign board of trade that has received a Foreign Security Index No-Action Letter or Commission certification with respect to a non-narrow-based security index futures contract traded on that board. Additionally, the expedited review will be available to a foreign board of trade that has received, and is compliant with the requirements of, the applicable staff no-action letter¹¹ permitting a foreign board of trade to offer U.S. traders with direct access to its trading system.¹²

As the Commission noted in the Proposal, the Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the Commission to register foreign boards of trade that provide U.S. persons with "direct access" to their trading systems.¹³ On November 19, 2010, the Commission proposed rules to implement the new statutory provision.¹⁴ The Commission anticipates that at such time as the Commission may adopt such registration requirements, the expedited review procedure would be extended to recipients of an FBOT registration license.

Under the expedited review procedure, a qualifying foreign board of trade may request that the Commission make its certification as to whether a

futures contract on a security index that it lists for trading, or plans to list for trading, on that board satisfies the requirements enumerated in section 2(a)(1)(C)(ii) of the Act within 45 days after the submission of such request. The review period could be extended by the Commission for an additional 45 days if the foreign security index futures contract raises novel or complex issues that require additional time for review, or if the foreign board of trade requests an extension of time.

If the foreign board of trade's request to the Commission for expedited consideration does not comply in form or content with the requirements of proposed rule 30.13, the Commission may notify the requesting foreign board of trade and treat the request for expedited review as withdrawn. However, the foreign board of trade will not be precluded from filing a new expedited request, provided that such submission satisfies the content and form requirements applicable to such process specified in rule 30.13.

Unless the Commission notifies the foreign board of trade that the request has been deemed withdrawn, the subject contract will be deemed to be in conformance with the requirements of section 2(a)(1)(C)(ii) and, therefore may be offered or sold within the U.S., at the expiration of the applicable review period. In contrast to the regular, non-expedited review, the Commission will not issue a certification letter to the foreign board of trade upon completion of its review.

If the Commission will not, or is unable to, deem that the foreign security index futures contract or the underlying security index conforms to the requirements of the Act, it will so notify the foreign board of trade within the 45 day time period or such extended time frame, with a brief statement of the reasons. Upon such notification, the foreign board of trade's request for Commission certification will be treated as having been withdrawn. The foreign board of trade, however, will not be precluded from filing a new submission, provided that such submission sufficiently addresses the deficiencies or issues identified in the Commission notification.¹⁵

¹⁵ Requests for staff no-action letters respecting foreign security index futures contracts that are currently pending or submitted prior to adoption of a final rule will be considered as a request for Commission certification following the adoption of § 30.13. Any foreign board of trade eligible for expedited review under any final rule adopted by the Commission would have to submit a request for such treatment.

D. Eurex Comments

Eurex states that the proposed Commission certification procedures focus on an index's compliance with the standards for non-narrow security index trading. Therefore, Eurex recommends that only prior notification be required: (i) For any change in contract terms that do not relate to the composition of the index, such as index multiplier; or (ii) to list additional products based on an index for which a contract has been certified and whose terms differ from the original contract by the "size of the multiplier or other non-index related features."¹⁶

As a preliminary matter, the Commission notes that under the current staff no-action process, the staff reviews the underlying index, as well as the terms and conditions of the overlying futures contract, and in particular those terms and conditions relating to cash settlement. In that regard, the staff examines, among other things, whether the cash price series is reliable, acceptable, publicly available and timely; that the cash settlement price is reflective of the underlying cash market; and that the cash settlement price is not readily susceptible to manipulation. In summary, although the staff review of foreign security index contracts may be focused primarily on the nature of the underlying index, it is not exclusively so. As noted above, the substantive review will remain the same under the new rule 30.13 as it is under the current no-action process.

The Commission also notes that under the existing staff no-action process, a foreign board of trade is required to notify the Commission of any material changes in facts or representations submitted in connection with the original request for relief; non-material changes to contract terms do not trigger any such notification requirement. Generally speaking, the Commission considers the following routine and non-material changes: (i) Changes in the composition, computation, or method of selection of component entities of an index referenced and defined in the contract's terms; or (ii) changes that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price formation and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product.

In response to Eurex's comments and to further remove any unnecessary impediments to offerings of foreign

¹⁶ Letter from Eurex, to the Commission's Office of the Secretariat (January 18, 2011).

¹¹ Since 1996, the Commission staff has issued no-action letters to foreign boards of trade stating, subject to compliance with certain conditions, that it will not recommend that the Commission take enforcement action if the foreign board of trade provides its members or participants in the U.S. access to its electronic trading system without seeking designation as a Designated Contract Market or registration as a Derivatives Transaction Execution Facility ("Foreign Board of Trade No-Action Letters"). To avail itself of the expedited review process, the FBOT must submit a written statement representing that it remains fully compliant with the terms and conditions of the applicable Foreign Board of Trade No-Action Letter.

¹² To avail itself of the expedited review process, the FBOT must submit a written statement representing that it remains fully compliant with the terms and condition of the applicable Foreign Board of Trade No-Action Letter.

¹³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

¹⁴ 75 FR 70974, Nov. 19, 2010.

security index contracts, the Commission is adding paragraph (m) to rule 30.13 to provide that a foreign security index futures contract may be offered or sold to U.S. customers in reliance on a previously-issued Foreign Board of Trade No-Action Letter or Commission certification, provided that the contract is: (i) Based on an index that was the subject of such prior certification or no-action relief; (ii) "substantially identical" to the contract underlying such index. In such case, the foreign board of trade may submit the contract to the Commission for an accelerated review of fifteen business days for confirmation that such contract is substantially identical to the relevant existing contract¹⁷ and thus may be offered or sold in the U.S. upon reliance of a previously-issued Foreign Security Index No-Action Letter or Commission certification. In making such submission, the foreign board of trade must provide an explanation of why the subject contract is substantially identical to a contract that was the subject of a prior Commission certification or Foreign Security Index No-Action Letter, together with information specified in § 30.13(a)(2)(v) to (vii). Unless the Commission notifies the foreign board of trade within the fifteen business days that the contract will be reviewed under either the full or expedited procedure, such contract may be offered or sold in the U.S. at the end of that 15 day period.¹⁸

II. Related Matters

A. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of adopted regulations outweigh their costs. Rather, section 15(a) requires the Commission to consider the cost and benefits of the subject regulations. Section 15(a) further specifies that the costs and benefits of new regulations shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the market for

¹⁷ For example, a contract that is identical to an existing contract except that it has a different contract multiplier would generally be able to rely on a previously-issued Foreign Security Index No-Action Letter or Commission certification.

¹⁸ This authority is delegated to the Director of the Division of Market Oversight in consultation with the General Counsel. See paragraph (o) of the rule.

listed derivatives; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

In the proposed rule, the Commission determined that there are no apparent new costs associated with proposed § 30.13. The proposed rule would codify and streamline the current review process, without substantive changes to the review standards and information required to be filed with respect to a broad-based security index. Accordingly, the Commission believes that the proposed review procedures would not compromise customer protection safeguards provided by the Act or in any way be contrary to the public interest. Additionally, foreign boards of trade and U.S. market participants will benefit from proposed § 30.13. The certification process being proposed will provide a foreign board of trade with greater certainty with respect to the contracts it offers in the U.S., which until now have only been subject to staff no-action relief that is not binding on the Commission. Moreover, the proposed expedited review process would enhance market efficiency by providing foreign boards of trade with greater certainty concerning the time necessary to obtain regulatory clearance in order to market broad-based security index products within the United States. Finally, streamlining the review process would make additional hedging instruments available to U.S. persons without unnecessary delay, and in turn, may foster price discovery in the futures market.

The Commission received no comments on the costs associated with this rulemaking, and two foreign boards of trade commented that the benefits to them would be significant.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their regulations on small businesses. The Commission has previously determined that designated contract markets are not small entities for purposes of the RFA.¹⁹ The Commission's determination was based on considerations relating to the central

role played by contract markets in the futures market, as well as the high volume of transactions conducted on such markets.

To the extent that the RFA may apply to the action proposed to be taken herein, the Commission does not believe that a foreign board of trade falls within the definition of "small entity" for purposes of the RFA. Rather, the Commission is of the view that the rationale that guided its finding with respect to U.S. contract markets apply equally to foreign boards of trade. Moreover, with regard to foreign firms, the RFA defines a "small entity" as a "business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or uses American products, materials or labor."²⁰ A foreign board of trade that may seek Commission certification pursuant to the proposed rule is not likely to meet such criteria. In the proposed rule, the Commission solicited comments on this matter; no comment letter was submitted. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the final rules promulgated herein will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

When publicizing proposed regulations, the Paperwork Reduction Act ("PRA") of 1995 (44 U.S.C. 3501 *et seq.*) imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The information collection requirements associated with the proposed regulations are administered under Office of Management and Budget control numbers 3038-0022 and 3038-0054. In the proposing release, the Commission stated that the proposed regulations would not impose any new or additional recordkeeping or information collection requirement that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* No comments were submitted on this matter. Accordingly, the PRA is inapplicable.

List of Subjects in 17 CFR Part 30

Advertising, Designated contract market, Fast-track, Foreign board of

²⁰ See 5 U.S.C. 601(6) (defining "small entity" to have the same term as the term "small business" as used under section 3 of the Small Business Act, 13 CFR 121.201).

¹⁹ See 47 FR 18618, Apr. 30, 1982.

trade, Foreign security index futures, No-action letter, Non-narrow foreign security index future, Reporting and recordkeeping requirements.

For the reasons set forth in the Preamble, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 17 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

■ 2. Section 30.13 is added to read as follows:

§ 30.13 Commission certification.

With respect to foreign futures and options contracts on a non-narrow-based security index:

(a) *Request for certification.* A foreign board of trade may request that the Commission certify that a futures contract on a non-narrow-based security index that trades, or is proposed to be traded thereon, conforms to the requirements of section 2(a)(1)(C)(ii) of the Act and therefore, that futures contract may be offered or sold to persons located within the United States in accordance with section 2(a)(1)(C)(iv) of the Act. A submission requesting such certification must:

(1) Be filed electronically with the Secretary of the Commission;

(2) Include the following information in English:

(i) The terms and conditions of the contract and all other relevant rules of the exchange and, if applicable, of the foreign board of trade on which the underlying securities are traded, which have an effect on the over-all trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(ii) Surveillance agreements between the foreign board of trade and the exchange(s) on which the underlying securities are traded;

(iii) Assurances from the foreign board of trade of its ability and willingness to share information with the Commission, either directly or indirectly;

(iv) When applicable, information regarding foreign blocking statutes and their impact on the ability of United States government agencies to obtain information concerning the trading of such contracts;

(v) Information and data denoted in U.S. dollars where appropriate (and the conversion date and rate used) relating to:

(A) The method of computation, availability, and timeliness of the index;

(B) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index as well as the combined weighting of the five highest-weighted stocks in the index;

(C) Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(D) Method of calculation of the cash-settlement price and the timing of its public release;

(E) Average daily volume of trading, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for the past six calendar months, calculated pursuant to § 41.11 of this chapter; and

(vi) A written statement that the contract conforms to the criteria enumerated in section 2(a)(1)(C)(ii) of the Act, including:

(A) A statement that the contract is cash-settled;

(B) An explanation of why the contract is not readily subject to manipulation or to be used to manipulate the underlying security;

(C) A statement that the index is not a narrow-based security index as defined in section 1a(25) of the Act and the analysis supporting that statement;

(vii) A written representation that the foreign board of trade will notify the Commission of any material changes in any of the above information;

(viii) When applicable, a request to make the futures contract available for trading in accordance with the terms and conditions of, and through the electronic trading devices identified in, a Commission staff no-action letter stating, subject to compliance with certain conditions, that it will not recommend that the Commission take enforcement action if the foreign board of trade provides its members or participants in the U.S. access to its electronic trading system without seeking designation as a designated contract market ("Foreign Board of Trade No-Action Letter"), or pursuant to any foreign board of trade registration order issued by the Commission ("Foreign Board of Trade Registration Order"), and a certification from the foreign board of trade that it is in

compliance with the terms and conditions of that no-action letter or Foreign Board of Trade Registration Order; and

(ix) An explanation of the means by which U.S. persons may access these products on the foreign board of trade.

(b) *Termination of review.* The Commission, at any time during its review, may notify the requesting foreign board of trade that it is terminating its review under this section if it appears to the Commission that the submission is materially incomplete or fails in form or content to meet the requirements of this section.

(1) Such termination shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(2) The Commission shall also terminate review under this section if requested in writing to do so by the foreign board of trade.

(c) *Notice of denial of certification.* The Commission, at any time during its review under paragraph (a) of this section, may notify the requesting foreign board of trade that it has determined that the security index futures contract or underlying index does not conform with the requirements of section 2(a)(1)(C)(ii) of the Act.

(1) This notification will briefly specify the nature of the issues raised and the specific requirement of subsections 2(a)(1)(C)(ii)(I)–(III) of the Act with which the security index futures contract does not conform or to which it appears not to conform or the conformance to which cannot be ascertained from the submission.

(2) Such notification shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(d) *Notice of certification.* Upon review, if the Commission determines that the futures contract and the underlying index meet the requirements enumerated in section 2(a)(1)(C)(ii), the Commission will issue a letter to the foreign board of trade certifying that the security index contract traded on that board conforms to the requirements of section 2(a)(1)(C)(ii) of the Act and therefore, that futures contract may be offered or sold to persons located within the U.S. in accordance with section 2(a)(1)(C)(iv) of the Act and, if applicable, may be made available for trading in accordance with the terms and conditions of, and through the electronic trading devices identified in, the Foreign Board of Trade No-Action

Letter or the Foreign Board of Trade Registration Order.

(e) *Expedited review.* A foreign board of trade may request an expedited Commission review and determination of whether a futures contract on a security index that trades, or is proposed to be traded thereon, conforms to the requirements of section 2(a)(1)(C)(ii) of the Act and therefore, may be offered or sold to persons in the U.S. under section 2(a)(1)(C)(iv) of the Act. A submission requesting such expedited consideration should be filed in English with the Commission and should include: Information, statements and data complying with the form and content requirements in paragraph (a) of this section.

(f) *Eligibility for expedited review.* In order to qualify for expedited review under paragraph (e) of this section, the foreign board of trade must either:

(1) Have previously requested, and received, at least one no-action letter from the Office of General Counsel ("Foreign Security Index No-Action Letter") or Commission certification regarding a non-narrow based security index futures contract traded on that foreign board of trade and submit a written statement representing that the board remains fully compliant with the terms and conditions of such letter or certification; or

(2) Have received a Foreign Board of Trade No-Action Letter or Foreign Board of Trade Registration Order and submit a written statement representing that the board remains fully compliant with the terms and conditions of such letter or order.

(g) *Deemed to be in conformance.* Unless notified pursuant to paragraph (h), (i), or (j) of this section, any non-narrow-based foreign security index futures contract submitted for expedited review under paragraph (e) of this section shall be deemed to be in conformance with the requirements of section 2(a)(1)(C)(ii) of the Act and therefore, such futures contract may be offered or sold to persons located in the U.S. in accordance with section 2(a)(1)(C)(iv) forty-five days after receipt by the Commission, or at the conclusion of such extended period as described under paragraph (h) of this section, provided that the foreign board of trade does not amend the terms or conditions of the contract or supplement the request for expedited consideration, except as requested by the Commission or for correction of typographical errors. Any voluntary substantive amendment by the foreign board of trade will be treated as a new submission under this section.

(h) *Extension of review.* The Commission may extend the forty-five day review period set forth in paragraph (g) of this section for:

(1) An additional period up to forty-five days, if the request raises novel or complex issues that require additional time for review, in which case, the Commission will notify the foreign board of trade within the initial forty-five day review period and will briefly describe the nature of the specific issues for which additional time for review will be required; or

(2) Such extended period as the requesting foreign board of trade requests of the Commission in writing.

(i) *Termination of review.* The Commission, at any time during its review under paragraph (e) of this section or extension thereof as described under paragraph (h) of this section, may notify the requesting foreign board of trade that it is terminating its review under paragraph (e) of this section if it appears to the Commission that the submission is materially incomplete or fails in form or substance to meet the requirements of this section.

(1) Such termination shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(2) The Commission shall also terminate review under this section if requested in writing to do so by the foreign board of trade.

(j) *Notice of denial of certification.* The Commission, at any time during its review pursuant to paragraph (e), may notify the requesting foreign board of trade that it has determined that the security index futures contracts or underlying index does not conform with the requirements of section 2(a)(1)(C)(ii) of the Act.

(1) This notification will briefly specify the nature of the issues raised and the specific requirement of subsections 2(a)(1)(C)(ii)(I)-(III) of the Act with which the security index futures contract does not conform or to which it appears not to conform or the conformance to which cannot be ascertained from the submission.

(2) Such notification shall not prejudice the foreign board of trade from resubmitting a revised version of the contract, which addresses the deficiencies or issues identified by the Commission.

(k) *Foreign trading systems.* A foreign board of trade, who is a recipient of a Foreign of Trade No-Action Letter (and is compliant with the requirements of such letter) or Foreign Board of Trade Registration Order and is requesting

Commission certification of its non-narrow-based security index futures contract, may request that such contract submitted under paragraph (e) of this section be made available for trading under that letter or pursuant to the registration order, upon expiration of the applicable review period provided for under either paragraph (g) or (h) of this section. Absent Commission notification to the contrary, the foreign board of trade may make that contract available for trading on the Foreign Trading System upon expiration of the review period provided under paragraph (g) or (h) of this section.

(l) *Changes in facts and circumstances.* Any certification of a non-narrow based security index futures contracts submitted under paragraph (a) or (e) of this section shall be considered to be based on the facts and representations contained in the foreign board of trade's submissions to the Commission. Accordingly, the foreign board of trade shall promptly notify the Commission of any changes in material facts or representations.

(m) *Additional contracts on previously-reviewed index:* A new non-narrow-based security index futures contract may be offered or sold in the U.S. in reliance on a prior Foreign Security Index No-Action Letter or Commission certification, provided that the new contract is based on an index that was the subject of such Foreign Security Index No-Action Letter or Commission certification; and substantially identical to the contract overlying such index. In this context, the foreign board of trade may submit the contract to the Commission for an accelerated review of fifteen business days for confirmation that the subject contract is substantially identical to the existing contract. Unless the Commission notifies the foreign board of trade within those fifteen business days that the review will be conducted pursuant to either the full or expedited review procedure, the foreign board of trade may make available such contract for offer or sale within the U.S.

(n) *Grandfathered no-action letters.* Any non-narrow based security index futures contract that is the subject of an existing no-action letter issued by the Office of General Counsel, as of the date of the adoption of rule 30.13, shall be deemed to be in conformance with the criteria of section 2(a)(1)(C)(ii) of the Act, provided that the foreign board of trade submits a written statement representing that the contract remains fully compliant with the requirements of such letter.

(o) *Delegation.* The Commission hereby delegates, until such time as it

orders otherwise, to the Director of Market Oversight or his designee, in consultation with the General Counsel or his designee, the authority reserved to the Commission under paragraph (m) of this section. The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated pursuant to this paragraph (o).

■ 3. Appendix D to Part 30 is revised to read as follows:

Appendix D to Part 30—Commission Certification With Respect to Foreign Futures and Options Contracts on a Non-Narrow-Based Security Index

In its analysis of a request for certification by a foreign board of trade relating to a security index futures contract traded on that foreign board of trade pursuant to § 30.13, the Commission will evaluate the contract to ensure that it complies with the three criteria of section 2(a)(1)(C)(ii) of the Act.

(1) Because security index futures contracts are cash settled, the Commission also evaluates the contract terms and conditions relating to cash settlement. In that regard, the Commission examines, among other things, whether the cash price series is reliable, acceptable, publicly available and timely; that the cash settlement price is reflective of the underlying cash market; and that the cash settlement price is not readily susceptible to manipulation. In making its determination, the Commission considers the design and maintenance of the index, the method of index calculation, the nature of the component security prices used to calculate the index, the breadth and frequency of index dissemination, and any other relevant factors.

(2) In considering the susceptibility of an index to manipulation, the Commission examines several factors, including the structure of the primary and secondary markets for the component equities, the liquidity of the component stocks, the method of index calculation, the total capitalization of stocks underlying the index, the number, weighting and capitalization of individual stocks in the index, and the existence of surveillance sharing agreements between the board of trade and the securities exchange(s) on which the underlying securities are traded.

(3) To verify that the index is not narrow-based, the Commission considers the number and weighting of the component securities and the aggregate value of average daily trading volume of the lowest weighted quartile of securities. Under the Act, a security index is narrow-based if it meets any one of the following criteria:

- (i) The index is composed of fewer than 10 securities;
- (ii) Any single security comprises more than 30% of the total index weight;
- (iii) The five largest securities comprise more than 60% of the total index weight; or
- (iv) The lowest-weighted securities that together account for 25% of the total weight of the index have an aggregate dollar value of average daily trading volume of less than

US\$30 million (or US\$50 million if the index includes fewer than 15 securities).

Issued in Washington, DC, on September 16, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011-24609 Filed 9-23-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 25, 173, 175, 177, 178, 182, and 184

[Docket No. FDA-2011-N-0011]

Environmental Impact Considerations, Food Additives, and Generally Recognized As Safe Substances; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending certain regulations regarding environmental impact considerations, food additives, and generally recognized as safe (GRAS) substances to correct minor errors in the Code of Federal Regulations (CFR). This action is editorial in nature and is intended to provide accuracy and clarity to the Agency's regulations.

DATES: This rule is effective October 3, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 240-402-1256.

SUPPLEMENTARY INFORMATION: FDA is amending certain regulations in parts 25, 173, 175, 177, 178, 182, and 184 (21 CFR parts 25, 173, 175, 177, 178, 182, and 184). Minor errors were inadvertently published in the CFR affecting certain regulations regarding environmental impact considerations (part 25), food additives (parts 173, 175, 177, and 178), and GRAS substances (parts 182 and 184). This action makes the needed corrections.

The final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Publication of this document constitutes final action of these changes under the Administrative Procedure Act

(5 U.S.C. 553). These amendments are merely correcting nonsubstantive errors. FDA therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary. The changes addressed in this document are as follows:

1. The Agency is correcting typographical errors. Two chemical names are corrected: Polytetrafluoroethylene in § 175.105 and dialkyl (C₈-C₁₈) dimethylammonium chloride in § 177.2600. Two chemical formulas are corrected: *N,N*-bis(2-hydroxyethyl) alkylamine, where the alkyl groups (C₁₄-C₁₈) are derived from tallow in § 178.3130, and MnCl₂ in § 184.1446.

2. The Agency is also correcting five Chemical Abstract Service registry numbers (CAS Reg. Nos.) that are incorrectly listed: 123-93-5 in § 173.375, 1302-78-9 in § 184.1155, 7758-99-8 in § 184.1261, 10024-66-5 in § 184.1449, and 10025-69-1 in § 184.1845.

3. The Agency is updating citations. The two citations in 21 CFR 182.99 are updated to 40 CFR 180.910 and 40 CFR 180.920 due to a recent U.S. Environmental Protection Agency regulation. A citation in § 25.32 is updated. Section 25.32(p) refers to a petition pertaining to the label declaration of ingredients as described in § 101.103 (21 CFR 101.103). However, FDA revoked § 101.103 on June 3, 1996 (61 FR 27771 at 27779) because it duplicated the procedures in 21 CFR 10.30 for citizen petitions.

4. The Agency is amending tables in §§ 175.300 and 177.1210.

5. Finally, the Agency is updating § 184.1165. Under § 184.1165(a), both *n*-butane and iso-butane are described as odorless. However, the *Food Chemicals Codex*, 7th Edition (2010)¹ does not use the word "odorless" to describe the gases. Therefore, the Agency is amending its description by removing the word "odorless."

List of Subjects

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 173

Food additives.

21 CFR Part 175

Adhesives, Food additives, Food packaging.

¹ *Food Chemicals Codex*, 7th Edition, pp. 115 and 529, Rockville, MD: United States Pharmacopeial Convention, 2010.

21 CFR Part 177

Food additives, Food packaging.

21 CFR Part 178

Food additives, Food packaging.

21 CFR Part 182

Food ingredients, Food packaging, Spices and flavorings.

21 CFR Part 184

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 25, 173, 175, 177, 178, 182, and 184 are amended as follows:

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

■ 1. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991; 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

■ 2. Section 25.32 is amended by revising paragraph (p) to read as follows:

§ 25.32 Foods, food additives, and color additives.

* * * * *

(p) Issuance, amendment, or revocation of a regulation in response to a reference amount petition as described in § 101.12(h) of this chapter, a nutrient content claim petition as described in § 101.69 of this chapter, a health claim petition as described in § 101.70 of this chapter, or a petition pertaining to the label declaration of ingredients as described in § 10.30 of this chapter.

* * * * *

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

■ 3. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 4. Section 173.375 is amended by revising the introductory text to read as follows:

§ 173.375 Cetylpyridinium chloride.

Cetylpyridinium chloride (CAS Reg. No. 123–93–5) may be safely used in food in accordance with the following conditions:

* * * * *

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

■ 5. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 175.105 [Amended]

■ 6. Section 175.105 is amended in the table in paragraph (c)(5), in the “Substances” column, by removing the entry for “Polytetrafluoroethylene” and by adding in its place the entry for “Polytetrafluoroethylene.”

■ 7. Section 175.300 is amended by revising Table 2 in paragraph (d) to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(d) * * *

TABLE 2—TEST PROCEDURES FOR DETERMINING AMOUNT OF EXTRACTIVES FROM RESINOUS OR POLYMERIC COATINGS, USING SOLVENTS SIMULATING TYPES OF FOODS AND BEVERAGES

Condition of use	Types of food (see Table 1)	Extractant			
		Water (time and temperature)	Heptane ^{1,2} (time and temperature)	8% alcohol (time and temperature)	
A. High temperature heat-sterilized (e.g., over 212 °F).	I, IV–B	250 °F, 2 hr .....	.....	
	III, IV–A, VII	do	150 °F, 2 hr		
B. Boiling water-sterilized	II	212 °F, 30 min .....	.....	
	III, VII	do	120 °F, 30 min		
C. Hot filled or pasteurized above 150 °F	II, IV–B	Fill boiling, cool to 100 °F .....	.....	
	III, IV–A	do	120 °F, 15 min		
	V	do	do		
	II, IV–B, VI–B	150 °F, 2 hr .....	.....	
D. Hot filled or pasteurized below 150 °F	III, IV–A	do	100 °F, 30 min		
	V	do	do		
	VI–A .....	.....	.....
	II, IV–B, VI–B	120 °F, 24 hr .....	.....	
E. Room temperature filled and stored (no thermal treatment in the container).	III, IV–A	do	70 °F, 30 min	150 °F, 2 hr.	
	V, VII .....	.....	do	
	VI–A .....	.....	.....
F. Refrigerated storage (no thermal treatment in the container).	I, II, III, IV–A, IV–B, VI–B, VII	70 °F, 48 hr .....	.....	120 °F, 24 hr.
G. Frozen storage (no thermal treatment in the container).	VI–A .....	.....	.....	70 °F, 48 hr.
H. Frozen storage: Ready-prepared foods intended to be reheated in container at time of use:	I, II, III, IV–B, VII	70 °F, 24 hr .....	.....	
	1. Aqueous or oil in water emulsion of high or low fat.	I, II, IV–B	212 °F, 30 min		
	2. Aqueous, high or low free oil or fat	III, IV–A, VII	do		

¹ Heptane extractant not to be used on wax-lined containers.

² Heptane extractivity results must be divided by a factor of five in arriving at the extractivity for a food product.

* * * * *

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

■ 8. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

■ 9. Section 177.1210 is amended by revising Table 4 of paragraph (c) to read as follows:

§ 177.1210 Closures with sealing gaskets for food containers.

* * * * *
(c) * * *

TABLE 4—TEST PROCEDURES WITH TIME-TEMPERATURE CONDITIONS FOR DETERMINING AMOUNT OF EXTRACTIVES FROM CLOSURE-SEALING GASKETS, USING SOLVENTS SIMULATING TYPES OF FOODS AND BEVERAGES

Conditions of use	Types of food (see Table 3)	Extractant		
		Water (time and temperature)	Heptane ¹ (time and temperature)	8% alcohol (time and temperature)
A. High temperature heat-sterilized (e.g., over 212 °F).	I, IV-B	250 °F, 2 hr	
	III, IV-A, VII	do	150 °F, 2 hr	
B. Boiling water-sterilized	II	212 °F, 30 min	
	III, VII	do	120 °F, 30 min	
C. Hot filled or pasteurized above 150 °F	II, IV-B	Fill boiling, cool to 100 °F.	
	III, IV-A	do	120 °F, 15 min	
D. Hot filled or pasteurized below 150 °F	V	do	150 °F, 2 hr.
	II, IV-B, VI-B	150 °F, 2 hr	.....
	III, IV-A	do	100 °F, 30 min	
	V	.....	do
E. Room temperature filled and stored (no thermal treatment in the container).	VI-A	150 °F, 2 hr.
	II, IV-B, VI-B	120 °F, 24 hr	.....
F. Refrigerated storage (no thermal treatment).	III, IV-A	do	70 °F, 30 min	120 °F, 24 hr.
	V	.....	do
	VI-A	.....	.....
G. Frozen storage (no thermal treatment in the container).	I, II, III, IV-A, IV-B, VI-B, VII	70 °F, 48 hr	70 °F, 30 min	70 °F, 48 hr.
	VI-A	.....	.....

¹Heptane extractant not applicable to closure-sealing gaskets overcoated with wax.

§ 177.2600 [Amended]

■ 10. Section 177.2600 is amended in paragraph (c)(4)(ix) by removing the entry for "Dialkyl (C₈-C₁₈)" and by adding in its place the entry for "Dialkyl (C₈-C₁₈) dimethylammonium chloride for use only as a flocculating agent in the manufacture of silica."

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

■ 11. The authority citation for 21 CFR part 178 continues to read as follows:
Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 178.3130 [Amended]

■ 12. Section 178.3130 is amended in the table in paragraph (b), in the "List of Substances" column, by removing the entry for "N,N-Bis(2-hydroxyethyl) alkylamine, where the alkyl groups (C₁-C₁₈) are derived from tallow," and by adding in its place the entry for "N,N-Bis(2-hydroxyethyl) alkylamine, where the alkyl groups (C₁₄-C₁₈) are derived from tallow."

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

■ 13. The authority citation for 21 CFR part 182 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 14. Section 182.99 is revised to read as follows:

§ 182.99 Adjuvants for pesticide chemicals.

Adjuvants, identified and used in accordance with 40 CFR 180.910 and 40 CFR 180.920, which are added to pesticide use dilutions by a grower or applicator prior to application to the raw agricultural commodity, are exempt from the requirement of tolerances under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348).

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 15. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 16. Section 184.1155 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 184.1155 Bentonite.

(a) Bentonite (Al₂O₃·4SiO₂·nH₂O, CAS Reg. No. 1302-78-9) is principally a colloidal hydrated aluminum silicate.

* * * * *

■ 17. Section 184.1165 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 184.1165 n-Butane and iso-butane.

(a) n-Butane and iso-butane (empirical formula C₄H₁₀, CAS Reg. Nos. 106-97-8 and 75-28-5, respectively) are colorless, flammable gases at normal temperatures and pressures. * * *

* * * * *

■ 18. Section 184.1261 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 184.1261 Copper sulfate.

(a) Copper sulfate (cupric sulfate, CuSO₄·5 H₂O, CAS Reg. No. 7758-99-8)

usually is used in the pentahydrate form. * * *

* * * * *

■ 19. Section 184.1446 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 184.1446 Manganese chloride.

(a) Manganese chloride (MnCl₂, CAS Reg. No. 7773-01-5) is a pink, translucent, crystalline product. * * *

■ 20. Section 184.1449 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 184.1449 Manganese citrate.

(a) Manganese citrate (Mn₃(C₆H₅O₇)₂, CAS Reg. No. 10024-66-5) is a pale orange or pinkish white powder. * * *

■ 21. Section 184.1845 is amended by revising the fourth sentence of paragraph (a) to read as follows:

§ 184.1845 Stannous chloride (anhydrous and dehydrated).

(a) * * * Dihydrated stannous chloride (SnCl₂·2H₂O, CAS Reg. No. 10025-69-1) is the chloride salt of metallic tin that contains two molecules of water. * * *

* * * * *

Dated: September 19, 2011.

Susan Bernard,

Acting Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.

[FR Doc. 2011-24455 Filed 9-23-11; 8:45 am]

BILLING CODE 4160-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0386-201151; FRL-9471-1]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina: Clean Smokestacks Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of North Carolina for the purpose of establishing system-wide emission limitations from the North Carolina Clean Smokestacks Act (CSA) into the North Carolina SIP. On August 21, 2009, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air

Quality (DAQ), submitted an attainment demonstration for the Hickory-Morganton-Lenoir and Greensboro-Winston Salem-High Point 1997 fine particulate matter (PM_{2.5}) nonattainment area. That submittal included a request that the system-wide emission limitations from the North Carolina CSA be incorporated into the State's federally approved SIP. EPA has determined that the CSA portion of this SIP revision is approvable pursuant to the Clean Air Act (CAA or Act).

DATES: This rule will be effective October 26, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2011-0386. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey or Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Mr. Huey may be reached by phone at (404) 562-9104. Mr. Huey can also be reached via electronic mail at huey.joel@epa.gov. Ms. Ward may be reached by phone at (404) 562-9140 or via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What is the background of North Carolina's CSA?
- II. This Action
- III. Final Action
- IV. Statutory and Executive Order Reviews

V. Statutory and Executive Order Reviews

I. What is the background of North Carolina's CSA?

In June 2002, the General Assembly of North Carolina, Session 2001, passed Session Law 2002-4, also known as Senate Bill 1078. This legislation, entitled "*An Act to Improve Air Quality in the State by Imposing Limits on the Emission of Certain Pollutants from Certain Facilities that Burn Coal to Generate Electricity and to Provide for Recovery by Electric Utilities of the Costs of Achieving Compliance with Those Limits*," requires significant actual emission reductions from coal-fired power plants in North Carolina. The State expected that emission reductions from the CSA would have significant health benefits for the citizens of North Carolina and other states.

North Carolina's CSA includes a schedule of system-wide limitations (or caps) on emissions of nitrogen oxides (NO_x) and sulfur dioxide (SO₂) from coal-fired power plants in the State, the first of which became effective in 2007. The State expects the resulting emission reductions will serve as a significant step towards meeting the 1997 PM_{2.5} and 8-hour ozone national ambient air quality standards (NAAQS), among other NAAQS, improving visibility in the mountains and other scenic vistas, and reducing acid rain. EPA notes that all areas in the State that were designated nonattainment for the 1997 PM_{2.5} and 8-hour ozone NAAQS are currently attaining the standards. Although the Hickory-Morganton-Lenoir and Greensboro-Winston Salem-High Point nonattainment areas for the 1997 PM_{2.5} NAAQS have not yet been redesignated to attainment, EPA determined that these areas had attaining data based on the three-year period 2006-2008.¹ Also, although the Charlotte 1997 8-hour ozone nonattainment area is still designated nonattainment, EPA has issued a proposed determination that the Area has attaining data based on the 2008-2010 design value period. See 76 FR 20293 (April 12, 2011). North Carolina has identified the CSA as part of its plan to attain and maintain the NAAQS. Because North Carolina is relying on

¹ EPA's determination that the Hickory-Morganton-Lenoir and Greensboro-Winston Salem-High Point PM_{2.5} nonattainment areas have attained the 1997 PM_{2.5} NAAQS is not equivalent to the redesignation of the areas to attainment. The designation status of the areas remains nonattainment for the 1997 PM_{2.5} NAAQS until such time as EPA determines that the areas meet all of the CAA requirements for redesignation to attainment. See 75 FR 54 (January 4, 2010) and 75 FR 230 (January 5, 2010), respectively.

emissions reductions from the CSA to demonstrate attainment and maintenance for certain areas in the State, North Carolina is now formally seeking that the CSA be included in the SIP so that the CSA's requirements may be considered "permanent and enforceable."

III. This Action

EPA is approving a revision to the North Carolina SIP to incorporate the system-wide emission caps from the State's CSA. The specific provisions being incorporated into the SIP are paragraphs (a) through (e) of Section 1 of Session Law 2002-4, Senate Bill 1078 (hereafter "Senate Bill 1078") enacted June 20, 2002. This approval does not include incorporation into the North Carolina SIP of paragraphs (f) through (j) of Section 1 of Senate Bill 1078 nor any of Section 2 of Senate Bill 1078. Please refer to the docket for this rulemaking for the complete text of these provisions.

On June 22, 2011, EPA published a proposed rulemaking to incorporate the CSA requirements into federally-approved North Carolina SIP. See 76 FR 36468. The comment period for this proposed rulemaking closed on July 22, 2011. EPA did not receive any comments, adverse or otherwise, during the public comment period.

IV. Final Action

Pursuant to section 110 of the CAA, EPA is approving the system-wide emission caps from the North Carolina State legislation entitled, "*An Act to Improve Air Quality in the State by Imposing Limits on the Emission of Certain Pollutants from Certain Facilities that Burn Coal to Generate Electricity and to Provide for Recovery by Electric Utilities of the Costs of Achieving Compliance with Those Limits.*" EPA has evaluated the State's submittal and has determined that it meets the applicable requirements of the CAA and EPA regulations. In reducing system-wide NO_x and SO₂ emissions allowed by coal-fired power plants in the State, the CSA is strengthening North Carolina's SIP and will not interfere with CAA requirements. The approval of the CSA ensures that the State may take credit for the associated NO_x and SO₂ emission reductions when pertinent to SIP submittals for other CAA requirements.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations.

42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 13, 2011.

A. Stanley Meiburg

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

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

Subpart II—North Carolina

- 2. Section 52.1781 is amended by adding paragraph (h) to read as follows:

§ 52.1781 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(h) North Carolina submitted a control strategy plan for particulate matter entitled, "*An Act to Improve Air Quality in the State by Imposing Limits on the Emission of Certain Pollutants from Certain Facilities that Burn Coal to Generate Electricity and to Provide for Recovery by Electric Utilities of the Costs of Achieving Compliance with Those Limits.*" The State expects the resulting emission reductions of nitrogen oxides and sulfur dioxide from this control plan will serve as a

significant step towards meeting the 1997 PM_{2.5} and 8-hour ozone national ambient air quality standards (NAAQS), among other NAAQS, improving visibility in the mountains and other scenic vistas, and reducing acid rain. The specific approved provisions, submitted on August 21, 2009, are paragraphs (a) through (e) of Section 1 of Session Law 2002-4, Senate Bill 1078 enacted and state effective on June 20, 2002. This approval does not include paragraphs (f) through (j) of Section 1 of Senate Bill 1078 nor any of Section 2 of Senate Bill 1078.

[FR Doc. 2011-24513 Filed 9-23-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0631; FRL-9470-2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions establish transportation conformity regulations for the State of Maryland. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on November 25, 2011 without further notice, unless EPA receives adverse written comment by October 26, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2011-0631 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:*
fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2008-0631, Cristina Fernandez, Associate Director, Office of Air Planning Programs, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2011-0631. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington

Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814-3335, or by e-mail at kotsch.martin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

I. What is transportation conformity?

Transportation conformity is required under section 176(c) of the CAA to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the CAA for the following transportation related criteria pollutants: ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂). Conformity, for purposes of the SIP, means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS). The transportation conformity regulation is found in 40 CFR part 93 ("Federal conformity rule") and provisions related to conformity SIPs are found in 40 CFR 51.390.

II. What is the background for this action?

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU) was signed into law. SAFETEA-LU revised certain provisions of section 176(c) of the CAA, related to transportation conformity. Prior to SAFETEA-LU, states were required to address all of the Federal conformity rule's provisions in their conformity SIPs. After SAFETEA-LU, state's SIPs were required to contain all or portions of only the following three sections of the Federal conformity rule, modified as appropriate to each state's circumstances: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (written commitments to implement certain kinds of control measures); and 40 CFR 93.125(c) (written commitments to implement certain kinds of mitigation measures). States are no longer required to submit conformity SIP revisions that address the other sections of the Federal conformity rule.

III. What did the state submit and how did we evaluate it?

On September 17, 2010, the Maryland Department of the Environment submitted a revision to its SIP, Revision #10-07 to EPA for transportation conformity amendments adopted on June 30, 2008. The SIP revision included regulations .01 through .09 under COMAR 26.11.26 (Conformity).

We reviewed the submittals to assure consistency with the February 14, 2006, "Interim Guidance for Implementing the Transportation Conformity provisions in SAFETEA-LU." The guidance document can be found at <http://epa.gov/otaq/stateresources/transconf/policy.htm>. The guidance document states that each state is only required to address and tailor the aforementioned three sections of the Federal Conformity Rule to be included in their state conformity SIPs. EPA's review of Maryland's SIP revision indicates that it is consistent with EPA's guidance in that it includes the three aforementioned regulatory elements specified by SAFETEA-LU. Consistent with the EPA Conformity Rule at 40 CFR 93.105 (consultation procedures), COMAR 26.11.26.02, COMAR 26.11.26.04, and COMAR 26.11.26.05 identify the appropriate agencies, procedures, and allocation of responsibilities. In addition, COMAR 26.11.26.07 provides for appropriate public consultation/public involvement consistent with 40 CFR 93.105. With respect to the requirements of 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c), the SIP specifies that written commitments to implement control measures and mitigation measures for meeting these requirements will be provided as needed.

IV. Final Action

EPA is approving the Maryland SIP revisions for transportation conformity, which were submitted on September 17, 2010. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 25, 2011 without further notice unless EPA receives adverse comment by October 26, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a

subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action to approve the Maryland transportation conformity regulation may not be challenged later in proceedings to enforce its requirements. (See, section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 29, 2011.

W. C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entries for COMAR 26.11.26.01 and 26.11.26.03, and adding new entries for COMAR 26.11.26.02, 26.11.26.04, 26.11.26.05, 26.11.26.06, 26.11.26.07,

26.11.26.08, and 26.11.26.09 in numerical order. The amendments read as follows:

§ 52.1070 Identification of plan.

* * * * *
(c)* * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.26	Conformity			
26.11.26.01	Purpose	6/30/08	9/26/11 [Insert page number where the document begins].	New Regulation.
26.11.26.02	Definitions	6/30/08	9/26/11 [Insert page number where the document begins].	Definitions added for transportation conformity; definitions for general conformity were approved at (c)(136).
26.11.26.03	Transportation Conformity	6/30/08	9/26/11 [Insert page number where the document begins].	New Regulation.
26.11.26.04	Transportation Conformity—Consultation in General.	6/30/08	9/26/11 [Insert page number where the document begins].	New Regulation.
26.11.26.05	Transportation Conformity—Interagency Consultation Requirements.	6/30/08	9/26/11 [Insert page number where the document begins].	New Regulation.
26.11.26.06	Transportation Conformity—Dispute Resolution.	6/30/08	9/26/11 [Insert page number where the document begins].	New Regulation.
26.11.26.07	Transportation Conformity—Public Consultation Procedures.	6/30/08	9/26/11 [Insert page number where the document begins].	New Regulation.
26.11.26.08	Transportation Conformity—Interagency Consultation.	6/30/08	9/26/11 [Insert page number where the document begins].	New Regulation.
26.11.26.09	General Conformity	6/30/08	9/26/11 [Insert page number where the document begins].	Formerly SIP regulation 26.11.26.03.

* * * * *

[FR Doc. 2011-24526 Filed 9-23-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0789; FRL-9471-2]

Interim Final Determination To Stay and Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay the

imposition of offset sanctions and to defer the imposition of highway sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District' (SJVUAPCD) portion of the California State Implementation Plan (SIP) published on September 14, 2011. 76 FR 56706. The revisions concern SJVUAPCD Rule 4570.

DATES: This interim final determination is effective on September 26, 2011. However, comments will be accepted until October 26, 2011.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2011-0789, by one of the following methods:

1. **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions.

2. E-mail: steckel.andrew@epa.gov.
3. **Mail or deliver:** Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the

body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT:
Sona Chilingaryan, EPA Region IX,
(415) 972-3368,
chilingaryan.sona@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On January 14, 2010 (75 FR 2079), we finalized a limited approval and limited disapproval of SJVUAPCD Rule 4570 as adopted locally on June 18, 2009 and submitted by the State on June 26, 2009. We based our limited disapproval action on certain deficiencies in the submittal. Our disapproval action started a sanctions clock for imposition of sanctions pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31. Under 40 CFR 52.31(d)(1), offset sanctions apply eighteen months after the effective date of a disapproval and highway sanctions apply six months after the offset sanctions, unless we determine that the deficiencies forming the basis of the disapproval have been corrected.

On October 21, 2010, SJVUAPCD adopted revisions to Rule 4570 that were intended to correct the deficiencies identified in our limited disapproval action. On April 5, 2011, the State submitted these revisions to EPA. On September 14, 2011 (76 FR 56706) we proposed approval of the State's submittal because we believe it corrects the deficiencies identified in our January 14, 2010 limited disapproval action. Based on our September 14, 2011 proposed approval, we are taking this final rulemaking

action, effective on publication, to stay the imposition of offset sanctions and to defer the imposition of highway sanctions that were triggered by our January 14, 2010 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SJVUAPCD Rule 4570, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 52.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay the imposition of offset sanctions and to defer the imposition of highway sanctions associated with SJVUAPCD Rule 4570 based on our September 14, 2011 proposed approval of the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final

rulemaking process to stay and defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and defers Federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 26, 2011. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 16, 2011.

Thomas J. McCullough,

Acting Regional Administrator, Region IX.
(FR Doc. 2011-24516 Filed 9-23-11; 8:45 am)

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS-1349-CN]

RIN 0938-AQ28

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2012; Changes in Size and Square Footage of Inpatient Rehabilitation Units and Inpatient Psychiatric Units; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on August 5, 2011 entitled "Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2012; Changes in Size and Square Footage of Inpatient Rehabilitation Units and Inpatient Psychiatric Units," (hereinafter FY 2012 IRF PPS final rule (76 FR 47836)).

DATES: *Effective Date.* The corrections are effective October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Susanne Seagrave, (410) 786-0044.

SUPPLEMENTARY INFORMATION:

I. Background

There were technical errors in the August 5, 2011 FY 2012 IRF PPS final rule (76 FR 47836). These technical errors are identified and corrected in the "Summary of Errors" and "Correction of Errors" sections below. The provisions in this correction document are effective as if they were included in the final rule published on August 5, 2011. Accordingly, the corrections are effective October 1, 2011.

II. Summary of Errors

In the August 5, 2011 final rule (76 FR 47836), we applied our established formula for calculating the relative weight values for case-mix groups (CMG). The CMG relative weight values for CMGs 1201, 1202, 1203, 1301, 1302, and 1303 in Table 1 on pages 47842 through 47844 of the final rule did not reflect our policy that the relative weight values for higher-paying tiers must always be greater than or equal to the relative weight values for lower-paying tiers. That is, a tier 1 payment for a given CMG must always be at least as

high as a tier 2 payment for that same CMG, the tier 2 payment must always be at least as high as the tier 3 payment, and the tier 3 payment must always be at least as high as the "no-comorbidity" tier payment. We have used this policy in calculating the CMG relative weights since the inception of the IRF PPS. However, we inadvertently did not apply this policy correctly for CMGs 1201, 1202, 1203, 1301, 1302, and 1303 in Table 1 on pages 47842 through 47844 of the FY 2012 IRF PPS final rule.

Further, as discussed in "Step 4" in the CMG relative weights discussion, column 1, on page 47841 of the FY 2012 IRF PPS final rule, we normalized the FY 2012 CMG relative weights to the same average CMG relative weight values from the FY 2011 IRF PPS notice (75 FR 42836). As this process utilized the incorrect values that had been listed for the relative weight values for CMGs 1201, 1202, 1203, 1301, 1302, and 1303, upon correction we also needed to reapply the normalization process to the other CMGs using the corrected relative weight values. This process corrects the relative weight values for all CMGs so that we are appropriately applying the policy of normalizing the FY 2012 CMG relative weights to the same average CMG relative weight values from the FY 2011 IRF PPS notice.

Since the FY 2012 payment rates listed in Table 11 on pages 47865 through 47866 of the final rule are based on the CMG relative weights in Table 1 (the payment rates are equal to the CMG relative weights multiplied by the FY 2012 Standard Payment Conversion Factor), we are also providing corrections to Table 11 in the final rule to reflect the corrections to the CMG relative weights in Table 1. In addition, we are correcting the example of computing the IRF FY 2012 Federal prospective payment in Table 12 on page 47867 of the final rule to reflect the correction to the unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) from Table 11.

Finally, we utilized the CMG payment rates reflected in Table 11 of the IRF PPS final rule to determine the FY 2012 outlier threshold. As described in the final rule, the outlier threshold is to be set so that the estimated total outlier payments in FY 2012 will equal 3 percent of total estimated payments. Since corrections to the FY 2012 payment rates result in slight differences in the amount of outlier payments we estimate for FY 2012, the use of the corrected data results in an outlier threshold for FY 2012 IRF PPS of \$10,713. Therefore, we are correcting the outlier threshold amount for FY 2012 from \$10,660 to \$10,713 to ensure

that estimated outlier payments for FY 2012 continue to equal 3 percent of total estimated payments.

We note that the corrections to the CMG relative weight values in Table 1 of the FY 2012 IRF PPS final rule do not affect the average length of stay values, which we have republished here for simplicity. The average length of stay values are the same values that were published correctly in Table 1 of the August 5, 2011 final rule (76 FR 47836).

As a result of the corrections to Table 1 and Table 11 of the final rule, as well as the correction to the FY 2012 outlier threshold amount, some of the numbers in Table 14 on page 47887 of the final rule (the IRF Impact Table for FY 2012), also need to be corrected. We are correcting these numbers both in Table 14 and in the preamble text that references Table 14.

III. Waiver of Proposed Rulemaking and Delayed Effective Date

In accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), we ordinarily publish a notice of proposed rulemaking in the Federal Register to provide a period for public comment before the provisions of a rule take effect. We also ordinarily provide a 30-day delay in the effective

date of the provisions of a rule in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both notice and comment procedures and the 30-day delay in effective date if the Secretary finds, for good cause, that such procedures are impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons into the notice.

The corrections that are laid out in this document were necessitated by an inadvertent error to accurately apply our stated policies as we calculated and laid out the CMG relative weight values in Table 1 of the FY 2012 IRF PPS final rule. As a result of those calculation errors, corrections were needed in Tables 1, 11, 12 and 14. Corrections were also needed as a result of these calculation errors in the places indicated above in the preamble discussion.

Upon recognition of these calculation errors, we reviewed the comments that were submitted in response to our FY 2012 IRF PPS proposed rule. We found that the necessary corrections would not have altered the substantive content of those comments.

As the corrections necessitated by the calculation errors outlined above do not

change the stated policies in the FY 2012 IRF PPS final rule, as the policies and payment methodology expressed in the FY 2012 IRF PPS final rule (76 FR 47836) have previously been subjected to notice and comment procedures, and as the public's comments would not have been affected if we had published the correctly calculated data elements, we find it unnecessary to undertake further notice and comment procedures with respect to this correction document. Further, the corrections made in this document will not significantly affect anticipated overall reimbursements to IRF providers and, as such, will only result in negligible changes to anticipated revenues and will not necessitate any actions on the part of individual providers. Therefore, we find good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction document.

IV. Correction of Errors

In the August 5, 2011 FY 2012 IRF PPS final rule (76 FR 47836), make the following corrections:

1. On pages 47842 through 47844, Table 1, "Relative Weights and Average Length of Stay Values for Case-Mix Groups," is corrected as follows:

TABLE 1—RELATIVE WEIGHTS AND AVERAGE LENGTH OF STAY VALUES FOR CASE-MIX GROUPS

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0101	Stroke M>51.05	0.7671	0.7177	0.6447	0.6098	10	10	9	8
0102	Stroke M>44.45 and M<51.05 and C>18.5	0.9521	0.8908	0.8002	0.7568	12	13	10	10
0103	Stroke M>44.45 and M<51.05 and C<18.5	1.1369	1.0637	0.9555	0.9037	14	14	12	12
0104	Stroke M>38.85 and M<44.45	1.1812	1.1052	0.9928	0.9389	15	14	13	12
0105	Stroke M>34.25 and M<38.85	1.3725	1.2841	1.1535	1.0910	16	17	14	14
0106	Stroke M>30.05 and M<34.25	1.5805	1.4788	1.3284	1.2564	20	18	16	16
0107	Stroke M>26.15 and M<30.05	1.7895	1.6743	1.5040	1.4225	20	20	18	18
0108	Stroke M<26.15 and A<84.5	2.2165	2.0738	1.8629	1.7619	31	25	23	22
0109	Stroke M>22.35 and M<26.15 and A<84.5	2.0496	1.9177	1.7226	1.6292	24	23	20	20
0110	Stroke M<22.35 and A<84.5	2.6418	2.4717	2.2203	2.1000	33	29	26	25
0201	Traumatic brain injury M>53.35 and C>23.5	0.7466	0.6128	0.5677	0.5154	8	8	7	8
0202	Traumatic brain injury M>44.25 and M<53.35 and C>23.5	1.0607	0.8707	0.8065	0.7323	12	12	10	10
0203	Traumatic brain injury M>44.25 and C<23.5	1.2074	0.9911	0.9181	0.8336	16	11	13	12
0204	Traumatic brain injury M>40.65 and M<44.25	1.2649	1.0383	0.9618	0.8733	16	12	12	12
0205	Traumatic brain injury M>28.75 and M<40.65	1.5974	1.3113	1.2146	1.1029	17	18	15	14
0206	Traumatic brain injury M>22.05 and M<28.75	1.9887	1.6325	1.5122	1.3731	23	19	19	18
0207	Traumatic brain injury M<22.05	2.6902	2.2084	2.0455	1.8574	35	27	25	22
0301	Non-traumatic brain injury M>41.05	1.0568	0.9507	0.8434	0.7725	12	12	11	10
0302	Non-traumatic brain injury M>35.05 and M<41.05	1.3383	1.2039	1.0681	0.9782	12	15	13	13
0303	Non-traumatic brain injury M>26.15 and M<35.05	1.5912	1.4315	1.2699	1.1631	21	17	15	14
0304	Non-traumatic brain injury M<26.15	2.2032	1.9820	1.7583	1.6104	29	23	20	19
0401	Traumatic spinal cord injury M>48.45	1.0564	0.8795	0.8001	0.7020	14	14	11	10
0402	Traumatic spinal cord injury M>30.35 and M<48.45	1.3772	1.1465	1.0430	0.9151	17	14	13	12
0403	Traumatic spinal cord injury M>16.05 and M<30.35	2.4588	2.0470	1.8622	1.6339	29	26	23	20
0404	Traumatic spinal cord injury M<16.05 and A>63.5	4.3666	3.6353	3.3070	2.9016	52	39	38	35
0405	Traumatic spinal cord injury M<16.05 and A<63.5	3.8573	3.2113	2.9213	2.5632	52	39	36	29
0501	Non-traumatic spinal cord injury M>51.35	0.6555	0.6294	0.5613	0.4975	10	10	7	7
0502	Non-traumatic spinal cord injury M>40.15 and M<51.35	0.9809	0.9418	0.8399	0.7444	13	13	11	10
0503	Non-traumatic spinal cord injury M>31.25 and M<40.15	1.2453	1.1956	1.0663	0.9450	16	14	13	12
0504	Non-traumatic spinal cord injury M>29.25 and M<31.25	1.5015	1.4416	1.2856	1.1394	18	16	16	14
0505	Non-traumatic spinal cord injury M>23.75 and M<29.25	1.7549	1.6848	1.5026	1.3317	20	21	18	17
0506	Non-traumatic spinal cord injury M<23.75	2.4598	2.3616	2.1062	1.8667	34	28	24	23
0601	Neurological M>47.75	0.9452	0.7987	0.7286	0.6586	10	11	9	9

TABLE 1—RELATIVE WEIGHTS AND AVERAGE LENGTH OF STAY VALUES FOR CASE-MIX GROUPS—Continued

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0602	Neurological M>37.35 and M<47.75	1.2511	1.0572	0.9644	0.8717	12	13	12	11
0603	Neurological M>25.85 and M<37.35	1.6157	1.3654	1.2455	1.1258	17	16	14	14
0604	Neurological M<25.85	2.1425	1.8106	1.6515	1.4929	24	21	19	18
0701	Fracture of lower extremity M>42.15	0.7996	0.7871	0.7581	0.6767	10	12	10	9
0702	Fracture of lower extremity M>34.15 and M<42.15	1.0462	1.0299	0.9919	0.8854	12	13	12	12
0703	Fracture of lower extremity M>28.15 and M<34.15	1.2589	1.2393	1.1937	1.0654	15	15	14	14
0704	Fracture of lower extremity M<28.15	1.6270	1.6017	1.5426	1.3769	18	19	18	17
0801	Replacement of lower extremity joint M>49.55	0.5777	0.5777	0.5383	0.4915	7	8	7	7
0802	Replacement of lower extremity joint M>37.05 and M<49.55	0.7792	0.7792	0.7262	0.6630	8	11	9	9
0803	Replacement of lower extremity joint M>28.65 and M<37.05 and A>83.5	1.0718	1.0718	0.9988	0.9119	11	14	13	12
0804	Replacement of lower extremity joint M>28.65 and M<37.05 and A<83.5	0.9510	0.9510	0.8863	0.8092	10	12	11	10
0805	Replacement of lower extremity joint M>22.05 and M<28.65	1.1734	1.1734	1.0936	0.9984	11	14	13	13
0806	Replacement of lower extremity joint M<22.05	1.4368	1.4368	1.3390	1.2225	13	18	16	15
0901	Other orthopedic M>44.75	0.8460	0.7455	0.6746	0.6112	10	10	9	8
0902	Other orthopedic M>34.35 and M<44.75	1.1316	0.9971	0.9023	0.8175	12	13	12	11
0903	Other orthopedic M>24.15 and M<34.35	1.4493	1.2770	1.1556	1.0470	16	16	14	13
0904	Other orthopedic M<24.15	1.8779	1.6547	1.4973	1.3566	21	20	18	17
1001	Amputation, lower extremity M>47.65	1.0321	0.9074	0.8107	0.7246	13	12	10	10
1002	Amputation, lower extremity M>36.25 and M<47.65	1.3551	1.1914	1.0645	0.9514	16	14	13	12
1003	Amputation, lower extremity M<36.25	2.0018	1.7600	1.5725	1.4055	21	21	18	17
1101	Amputation, non-lower extremity M>36.35	1.0375	1.0375	0.9841	0.9236	11	11	12	11
1102	Amputation, non-lower extremity M<36.35	1.5611	1.5611	1.4808	1.3897	14	18	16	16
1201	Osteoarthritis M>37.65	0.8554	0.8554	0.8088	0.7645	13	13	11	10
1202	Osteoarthritis M>30.75 and M<37.65	1.1152	1.1152	1.0544	0.9966	16	16	14	13
1203	Osteoarthritis M<30.75	1.3737	1.3737	1.2989	1.2277	13	19	15	15
1301	Rheumatoid, other arthritis M>36.35	0.8929	0.8929	0.8833	0.7875	11	10	11	10
1302	Rheumatoid, other arthritis M>26.15 and M<36.35	1.1759	1.1759	1.1632	1.0370	17	17	14	13
1303	Rheumatoid, other arthritis M<26.15	1.5198	1.5198	1.5035	1.3403	15	19	18	16
1401	Cardiac M>48.85	0.9405	0.7530	0.6659	0.6022	10	10	9	8
1402	Cardiac M>38.55 and M<48.85	1.2630	1.0112	0.8941	0.8087	13	12	11	10
1403	Cardiac M>31.15 and M<38.55	1.5254	1.2213	1.0799	0.9767	18	14	13	12
1404	Cardiac M<31.15	1.9757	1.5818	1.3987	1.2651	24	19	16	15
1501	Pulmonary M>49.25	0.9606	0.8970	0.7731	0.7308	10	11	8	9
1502	Pulmonary M>39.05 and M<49.25	1.2091	1.1290	0.9732	0.9198	13	13	11	11
1503	Pulmonary M>29.15 and M<39.05	1.4911	1.3923	1.2001	1.1343	16	16	13	13
1504	Pulmonary M<29.15	1.8836	1.7589	1.5160	1.4330	22	18	17	16
1601	Pain syndrome M>37.15	1.1167	0.8790	0.7713	0.7211	12	12	10	10
1602	Pain syndrome M>26.75 and M<37.15	1.4957	1.1773	1.0331	0.9658	19	13	13	13
1603	Pain syndrome M<26.75	1.9322	1.5210	1.3347	1.2477	22	18	16	15
1701	Major multiple trauma without brain or spinal cord injury M>39.25	1.0424	0.9277	0.8419	0.7360	10	11	11	10
1702	Major multiple trauma without brain or spinal cord injury M>31.05 and M<39.25	1.3755	1.2242	1.1110	0.9712	13	15	14	13
1703	Major multiple trauma without brain or spinal cord injury M>25.55 and M<31.05	1.6223	1.4439	1.3104	1.1455	15	16	15	15
1704	Major multiple trauma without brain or spinal cord injury M<25.55	2.0766	1.8482	1.6773	1.4663	26	22	20	18
1801	Major multiple trauma with brain or spinal cord injury M>40.85	1.1991	0.9837	0.9497	0.8687	14	15	12	11
1802	Major multiple trauma with brain or spinal cord injury M>23.05 and M<40.85	1.6464	1.3507	1.3040	1.1927	18	20	15	15
1803	Major multiple trauma with brain or spinal cord injury M<23.05	2.8188	2.3124	2.2325	2.0420	34	32	26	24
1901	Guillian Barre M>35.95	1.1440	1.0078	0.9143	0.8879	13	14	12	12
1902	Guillian Barre M>18.05 and M<35.95	2.1760	1.9170	1.7390	1.6888	22	22	21	21
1903	Guillian Barre M<18.05	3.6334	3.2009	2.9037	2.8199	48	29	34	32
2001	Miscellaneous M>49.15	0.8533	0.7540	0.6760	0.6073	9	10	9	8
2002	Miscellaneous M>38.75 and M<49.15	1.1420	1.0091	0.9047	0.8128	12	12	11	10
2003	Miscellaneous M>27.85 and M<38.75	1.4421	1.2742	1.1425	1.0264	15	15	13	13
2004	Miscellaneous M<27.85	1.9337	1.7086	1.5319	1.3763	24	20	18	16
2101	Burns M>0	2.4686	2.1368	1.7017	1.3793	34	23	19	18
5001	Short-stay cases, length of stay is 3 days or fewer				0.1474				3
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.5851				7
5102	Expired, orthopedic, length of stay is 14 days or more				1.4705				18
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.6965				8

TABLE 1—RELATIVE WEIGHTS AND AVERAGE LENGTH OF STAY VALUES FOR CASE-MIX GROUPS—Continued

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
5104	Expired, not orthopedic, length of stay is 16 days or more	.....	.....	.....	1.8764	.....	.....	.....	23

2. On pages 47865 through 47866, Table 11, "FY 2012 Payment Rates," is corrected as follows:

TABLE 11—FY 2012 PAYMENT RATES

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
0101	\$10,797.70	\$10,102.35	\$9,074.80	\$8,583.54
0102	13,401.76	12,538.90	11,263.62	10,652.72
0103	16,003.00	14,972.64	13,449.62	12,720.48
0104	16,626.57	15,556.80	13,974.65	13,215.96
0105	19,319.31	18,074.99	16,236.67	15,356.92
0106	22,247.12	20,815.59	18,698.56	17,685.09
0107	25,189.00	23,567.45	21,170.30	20,023.11
0108	31,199.45	29,190.81	26,222.18	24,800.50
0109	28,850.17	26,993.55	24,247.32	22,932.62
0110	37,185.98	34,791.65	31,252.94	29,559.60
0201	10,509.14	8,625.77	7,990.95	7,254.77
0202	14,930.41	12,255.97	11,352.29	10,307.85
0203	16,995.36	13,950.72	12,923.18	11,733.75
0204	17,804.73	14,615.11	13,538.30	12,292.57
0205	22,485.00	18,457.86	17,096.71	15,524.42
0206	27,992.94	22,979.07	21,285.73	19,327.76
0207	37,867.26	31,085.44	28,792.46	26,144.76
0301	14,875.52	13,382.05	11,871.70	10,873.71
0302	18,837.91	16,946.10	15,034.58	13,769.14
0303	22,397.73	20,149.79	17,875.11	16,371.80
0304	31,012.24	27,898.63	24,749.83	22,667.99
0401	14,869.89	12,379.84	11,262.21	9,881.35
0402	19,385.47	16,138.13	14,681.27	12,880.95
0403	34,610.07	28,813.57	26,212.33	22,998.78
0404	61,464.26	51,170.48	46,549.33	40,842.92
0405	54,295.35	45,202.26	41,120.22	36,079.60
0501	9,226.82	8,859.43	7,900.86	7,002.81
0502	13,807.15	13,256.78	11,822.43	10,478.17
0503	17,528.84	16,829.27	15,009.24	13,301.82
0504	21,135.11	20,291.96	18,096.11	16,038.19
0505	24,701.97	23,715.24	21,150.60	18,745.01
0506	34,624.14	33,241.88	29,646.87	26,275.67
0601	13,304.64	11,242.50	10,255.77	9,270.45
0602	17,610.48	14,881.15	13,574.89	12,270.05
0603	22,742.59	19,219.37	17,531.66	15,846.76
0604	30,157.83	25,486.01	23,246.51	21,014.06
0701	11,255.17	11,079.22	10,671.02	9,525.23
0702	14,726.31	14,496.87	13,961.98	12,462.89
0703	17,720.28	17,444.39	16,802.52	14,996.57
0704	22,901.65	22,545.53	21,713.64	19,381.24
0801	8,131.71	8,131.71	7,577.11	6,918.35
0802	10,968.02	10,968.02	10,221.99	9,332.39
0803	15,086.66	15,086.66	14,059.11	12,835.90
0804	13,386.28	13,386.28	12,475.56	11,390.30
0805	16,516.78	16,516.78	15,393.51	14,053.48
0806	20,224.40	20,224.40	18,847.76	17,207.91
0901	11,908.30	10,493.66	9,495.67	8,603.25
0902	15,928.40	14,035.18	12,700.77	11,507.13
0903	20,400.35	17,975.05	16,266.23	14,737.57
0904	26,433.32	23,291.56	21,075.99	19,095.50
1001	14,527.84	12,772.56	11,411.41	10,199.47
1002	19,074.39	16,770.15	14,983.90	13,391.91
1003	28,177.34	24,773.76	22,134.51	19,783.82
1101	14,603.85	14,603.85	13,852.19	13,000.59
1102	21,974.04	21,974.04	20,843.74	19,561.42
1201	12,040.61	12,040.61	11,384.67	10,761.10
1202	15,697.56	15,697.56	14,841.73	14,028.14

TABLE 11—FY 2012 PAYMENT RATES—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
1203	19,336.20	19,336.20	18,283.32	17,281.11
1301	12,568.46	12,568.46	12,433.33	11,084.85
1302	16,551.97	16,551.97	16,373.20	14,596.81
1303	21,392.70	21,392.70	21,163.27	18,866.06
1401	13,238.48	10,599.23	9,373.21	8,476.57
1402	17,777.99	14,233.65	12,585.35	11,383.26
1403	21,471.53	17,191.02	15,200.67	13,748.03
1404	27,809.95	22,265.42	19,688.10	17,807.55
1501	13,521.41	12,626.17	10,882.16	10,286.74
1502	17,019.29	15,891.80	13,698.76	12,947.10
1503	20,988.72	19,598.01	16,892.61	15,966.41
1504	26,513.55	24,758.28	21,339.22	20,170.91
1601	15,718.67	12,372.80	10,856.82	10,150.20
1602	21,053.47	16,571.67	14,541.92	13,594.60
1603	27,197.65	21,409.60	18,787.24	17,562.63
1701	14,672.82	13,058.31	11,850.58	10,359.94
1702	19,361.54	17,231.84	15,638.44	13,670.61
1703	22,835.49	20,324.34	18,445.19	16,124.06
1704	29,230.22	26,015.26	23,609.67	20,639.64
1801	16,878.53	13,846.56	13,367.98	12,227.82
1802	23,174.73	19,012.45	16,355.10	16,788.45
1803	39,677.43	32,549.34	31,424.67	28,743.19
1901	16,102.94	14,185.79	12,869.69	12,498.08
1902	30,629.38	26,983.69	24,478.16	23,771.55
1903	51,143.74	45,055.87	40,872.48	39,692.91
2001	12,011.05	10,613.30	9,515.38	8,548.35
2002	16,074.79	14,204.09	12,734.56	11,440.97
2003	20,299.00	17,935.64	16,081.83	14,447.61
2004	27,218.76	24,050.25	21,563.02	19,372.80
2101	34,748.01	30,077.60	23,953.13	19,415.03
5001				2,074.80
5101				8,235.87
5102				20,698.76
5103				9,803.93
5104				26,412.21

3. On page 47867: Payment,” correct the entire table to
 a. In table 12, “Example of Computing the IRF FY 2012 Federal Prospective Payment,” read as follows:

TABLE 12—EXAMPLE OF COMPUTING THE IRF PPS FY 2012 FEDERAL PROSPECTIVE PAYMENT

Steps		Rural Facility A (Spencer Co., IN)	Urban Facility B (Harrison Co., IN)
1	Unadjusted Federal Prospective Payment	29,559.60	29,559.60
2	Labor Share	0.70199	0.70199
3	Labor Portion of Federal Payment	\$20,750.54	\$20,750.54
4	CBSA Based Wage Index (shown in the Addendum, Tables 1 and 2)	0.8391	0.8896
5	Wage-Adjusted Amount	\$17,411.78	\$18,459.68
6	Nonlabor Amount	\$8,809.06	\$8,809.06
7	Wage-Adjusted Federal Payment	\$26,220.84	\$27,268.74
8	Rural Adjustment	1.184	1.0000
9	Wage- and Rural-Adjusted Federal Payment	\$31,045.47	\$27,268.74
10	LIP Adjustment	1.0228	1.0666
11	FY 2012 Wage-, Rural- and LIP-Adjusted Federal Prospective Payment Rate	\$31,753.31	\$29,084.84
12	FY 2012 Wage- and Rural-Adjusted Federal Prospective Payment	\$31,045.47	\$27,268.74
13	Teaching Status Adjustment	0.0000	0.0610
14	Teaching Status Adjustment Amount	\$0.00	\$1,663.39
15	FY2012 Wage-, Rural-, and LIP-Adjusted Federal Prospective Payment Rate	\$31,753.31	\$29,084.84
16	Total FY 2012 Adjusted Federal Prospective Payment	\$31,753.31	\$30,748.23

b. In the 1st column, the 4th paragraph, in line 2, the amount

“\$31,771.45” is corrected to read “\$31,753.31.”

c. In the 1st column, the 2nd paragraph, in line 4, the amount

“\$30,765.80” is corrected to read
“\$30,748.23.”

4. On page 47868, in the 3rd column,
in the 1st full paragraph, in line 6, the

amount “\$10,660” is corrected to read
“\$10,713.”

5. On page 47887, Table 14, “IRF
Impact Table for FY 2012,” is corrected
as follows:

TABLE 14—IRF IMPACT TABLE FOR FY 2012

Facility classification (1)	Number of IRFs (2)	Number of cases (3)	Outlier (4)	FY 2012 adjusted market basket increase factor ¹ (5)	FY 2012 CBSA wage index and labor-share (6)	CMG (7)	Total percent change (8)
Total	1,152	397,388	0.4%	1.8%	0.0%	0.0%	2.2%
Urban unit	752	200,587	0.6	1.8	-0.1	0.0	2.3
Rural unit	175	27,997	0.5	1.8	0.8	0.0	3.2
Urban hospital	205	162,171	0.2	1.8	0.0	0.0	1.9
Rural hospital	20	6,633	0.2	1.8	1.6	-0.1	3.5
Urban For-Profit	317	151,821	0.2	1.8	0.1	-0.1	2.1
Rural For-Profit	63	12,437	0.4	1.8	1.1	0.1	3.4
Urban Non-Profit	596	199,313	0.5	1.8	-0.3	0.0	2.1
Rural Non-Profit	122	20,442	0.5	1.8	0.7	0.1	3.1
Urban Government	44	11,624	0.7	1.8	0.2	0.0	2.8
Rural Government	10	1,751	0.9	1.8	1.3	0.1	4.1
Urban	957	362,758	0.4	1.8	-0.1	0.0	2.1
Rural	195	34,630	0.5	1.8	0.9	0.1	3.2
Urban by region: ²							
Urban New England	32	16,393	0.4	1.8	-1.2	0.0	1.0
Urban Middle Atlantic	142	66,363	0.3	1.8	-0.7	0.0	1.4
Urban South Atlantic	132	63,793	0.4	1.8	0.0	0.0	2.2
Urban East North Central	188	57,269	0.5	1.8	0.0	0.0	2.4
Urban East South Central	49	26,375	0.2	1.8	0.4	-0.1	2.2
Urban West North Central	73	18,118	0.6	1.8	0.0	0.0	2.3
Urban West South Central	169	66,313	0.4	1.8	0.5	0.0	2.7
Urban Mountain	70	23,834	0.4	1.8	0.2	-0.1	2.3
Urban Pacific	102	24,300	0.7	1.8	-0.3	0.0	2.2
Rural by region: ²							
Rural New England	6	1,354	1.0	1.9	0.7	0.1	3.7
Rural Middle Atlantic	16	3,232	0.2	1.8	1.8	0.1	4.0
Rural South Atlantic	25	5,988	0.3	1.8	0.8	0.0	2.9
Rural East North Central	33	5,776	0.4	1.8	0.1	0.1	2.4
Rural East South Central	23	4,017	0.2	1.8	1.4	0.0	3.4
Rural West North Central	31	3,945	0.7	1.8	-0.2	0.1	2.5
Rural West South Central	50	9,261	0.5	1.8	1.6	0.1	4.0
Rural Mountain	7	670	0.6	1.8	0.3	0.2	2.9
Rural Pacific	4	387	1.4	1.8	-0.4	-0.1	2.7
Teaching status:							
Non-teaching	1,036	345,500	0.4	1.8	0.1	0.0	2.3
Resident to ADC less than 10%	69	36,878	0.5	1.8	-0.4	0.0	2.0
Resident to ADC 10%-19%	33	12,497	0.6	1.8	-0.3	0.1	2.2
Resident to ADC greater than 19%	14	2,513	0.7	1.8	-0.7	-0.1	1.8
Disproportionate Share Patient Percentage (DSH):							
DSH = 0%	39	10,534	0.4	1.8	0.4	0.0	2.7
DSH <5%	208	62,434	0.4	1.8	-0.2	0.0	2.0
DSH 5%-10%	342	134,694	0.3	1.8	0.0	0.0	2.2
DSH 10%-20%	330	123,398	0.4	1.8	0.0	0.0	2.2
DSH >20%	233	66,328	0.5	1.8	0.0	0.0	2.3

¹This column reflects the impact of the rebased RPL market basket increase factor for FY 2012 of 1.8 percent, which includes a market basket update of 2.9 percent, a 0.1 percentage point reduction in accordance with sections 1886(j)(3)(C)(ii)(I) and 1886(j)(3)(D)(ii) of the Act and a 1.0 percent reduction for the productivity adjustment as required by section 1886(j)(3)(C)(iii)(I) of the Act, as finalized in 76 FR 47860.

²A map of States that comprise the 9 geographic regions can be found at: http://www.census.gov/geov/www/us_regdiv.pdf.

6. On page 47888:

a. In the 1st column, in the 1st full paragraph, in line 18, the amount "\$10,660" is corrected to read "\$10,713."

b. In the 1st column, in the 2nd full paragraph, in line 9, the value "1.5" is corrected to read "1.4."

c. In the 2nd column, the 2nd full paragraph, lines 9 through 14, the sentence: "The largest decrease in payments as a result of these updates is a 0.1 percent decrease to rural freestanding IRFs, urban IRFs in the East South Central and Mountain regions, and rural IRFs in the Pacific region." is corrected to read, "The largest decrease in payments as a result of these updates is a 0.1 percent decrease to rural IRF hospitals, urban for-profit IRFs, urban IRFs in the East South Central and Mountain regions, rural IRFs in the Pacific region, and teaching IRFs with resident to ADC ratios greater than 19 percent."

7. On page 47890, in the 1st column, the 2nd full paragraph, lines 1 through 4, the sentence, "Overall the largest payment increase is estimated at 4.1 percent for rural government-owned IRFs and rural IRFs in the West South Central region." is corrected to read, "Overall, the largest payment increases are estimated at 4.1 percent for rural government-owned IRFs, and 4.0 percent for rural IRFs in the Middle Atlantic and West South Central regions."

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 19, 2011.

Barbara J. Holland,

Deputy Executive Secretary to the Department.

[FR Doc. 2011-24671 Filed 9-23-11; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 476

[CMS-1518-CN3]

RIN 0938-AQ24; 0938-AQ92

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2012 Rates; Hospitals' FTE Resident Caps for Graduate Medical Education Payment; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors and typographical errors in the final rule entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2012 Rates; Hospitals' FTE Resident Caps for Graduate Medical Education Payment; Corrections" which appeared in the August 18, 2011 *Federal Register*.

DATES: This correction document is effective October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Slater, (410) 786-5229, Hospital inpatient wage data. Michele Hudson, (410) 786-4487, Long-term care hospital wage data. Caroline Gallaher, (410) 786-8705, Long-term care hospital quality measures.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011-19719 of August 18, 2011 (76 FR 51476), the final rule entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2012 Rates; Hospitals' FTE Resident Caps for Graduate Medical Education Payment; Corrections" (hereinafter referred to as the FY 2012 IPPS/FY 2012 LTCH PPS final rule) there were a number of technical errors that are identified and corrected in the Correction of Errors section. We have already made changes to our rates through PRICER and joint signature memoranda. Accordingly, the corrections are effective October 1, 2011.

II. Summary of Errors and Corrections Posted on the CMS Web Site

A. Errors in the Preamble

On page 51745, in our discussion of quality reporting for long-term care hospitals (LTCHs) for FY 2014 payment determinations, Measure #1, we inadvertently miscounted and omitted a footnote.

On pages 51746 and 51747, in our discussion of the technical expert panel (TEP) we made typographical errors and made a technical error in a footnote.

On page 51747, in our discussion of the TEP, the acronym for Center Line Catheter-Associated Bloodstream Infection (CLABSI) was inadvertently misspelled.

On page 51748, in our discussion of quality reporting for LTCHs for FY 2014 payment determinations, Measure #2, we inadvertently included an incorrect *Web site* link for detailed information on the Standardized Infection Ratio (SIR).

On page 51752, in our discussion of quality reporting for LTCHs data submission, we made an error in referencing the number of States in which healthcare associated infections (HAIs) reporting is already or soon will be mandated.

On page 51754, in our discussion of the method of data collection and submission for the pressure ulcer measure, we made typographical and technical errors.

On page 51755, in our discussion of Continuity Assessment Record & Evaluation (CARE), we made a grammatical error.

On page 51780, in our discussion of the information collection requirements (ICRs) for the quality reporting program for LTCHs, we made an error in the number of States that already submitted HAI data to National Healthcare Safety Network (NHSN).

On page 51813, in our discussion of the *Web site* location for the LTCH PPS tables for the FY 2012 IPPS/FY 2012 LTCH PPS final rule, we made a typographical error in the regulation number.

B. Corrections Posted on the CMS Web Site

On pages 51812 and 51813, we list tables 2, 3A, 3B, 3C, 4A, 4B, 4C, 4J, 9A, 9C, 12A, and 12B as tables that are available only through the Internet.

In Table 2.—Acute Care Hospitals Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2010; Hospital Wage Indexes for Federal Fiscal Year 2012; Hospital Average Hourly Wages for Federal Fiscal Years 2010 (2006 Wage Data), 2011 (2007

Wage Data), and 2012 (2008 Wage Data); and 3-Year Average of Hospital Average Hourly Wages, we are correcting technical errors in hospitals' wage data or geographic classifications that were used in calculating the wage index that was published in the FY 2012 IPPS/FY 2012 LTCH PPS final rule. We are correcting Table 2 by including corrections to the wage data for providers 010001 and 340039; the providers' corrected wage data were inadvertently omitted from the final FY 2012 wage index database. In addition, we are correcting errors in geographic classification for 3 providers (providers 150112, 180017, and 190246). As a result of the wage data and geographic classification corrections made for the 5 providers noted, we are also correcting the wage index for other providers that are located in or reclassified to the same geographic area.

In Table 3A.—FY 2012 and 3-Year Average Hourly Wage for Acute Care Hospitals in Urban Areas by CBSA and Table 3B.—FY 2012 and 3-Year Average Hourly Wage for Acute Care Hospitals in Rural Areas by CBSA, we are correcting certain area average hourly wages based on corrections to errors in hospital wage data. As discussed previously, in Table 2 we are correcting the wage data for 2 providers. The corrections for one of these 2 providers (010001) require a correction in the associated area average hourly wage. The correction of the geographic classification of provider 190246 also requires corrections to the associated area average hourly wages. Therefore, we are correcting the area average hourly wage for CBSA 20020 (Dothan, AL) and CBSA 33740 (Monroe, LA) in Table 3A and also correcting the area average hourly wage for CBSA 19 (rural Louisiana) in Table 3B. The correction to the wage data for provider 340039 does not result in a change in the associated area wage index.

In Table 4A.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals in Urban Areas; Table 4B.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals in Rural Areas; and Table 4C.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals that are Reclassified, we are correcting technical errors in hospitals' wage data and geographic classifications that were used in calculating the wage index that was published in the FY 2012 IPPS/FY 2012 LTCH PPS final rule. In addition to correcting the wage data for provider 010001, provider 150112 should have been withdrawn from its reclassification to CBSA 26900 Indianapolis-Carmel, IN

(that is, removing the provider from Table 9A); provider 180017 had reinstated a prior reclassification to CBSA 14540 Bowling Green, KY (that is, adding the provider to Table 9A) and provider 190246 was incorrectly listed in CBSA 19 (rural Louisiana), but should have been listed in CBSA 33740 Monroe, LA. CBSA 14 (rural Illinois) is removed from Table 4C because the only provider in Illinois that was reclassified to CBSA 14 cancelled its rural status under § 412.103 (as noted in Table 9C).

In Table 4J.—Out-Migration Adjustment for Acute Care Hospitals—FY 2012, we are adding provider 140167 to Table 4J to receive the outmigration adjustment because it cancelled its Lugar redesignation in order to receive the outmigration adjustment. Two additional counties are now listed in Table 4J. Coffee County, AL has two providers now receiving an outmigration adjustment (010027 and 010049). Dale County, AL has one provider now receiving an outmigration adjustment (010021). The outmigration adjustment for Caldwell County, LA has changed and affects one provider (190184).

In Table 9A.—Hospital Reclassifications and Redesignations—FY 2012, we are correcting technical errors in hospitals' geographic reclassifications that were used in calculating the wage index that was published in the FY 2012 IPPS/FY 2012 LTCH PPS final rule. Provider 150112 was erroneously listed in Table 9A of the Addendum to the final rule as being reclassified; and therefore, we are correcting the table by removing this provider from Table 9A. Conversely, provider 180017 is reclassified but was inadvertently omitted from Table 9A; and therefore, we are correcting this error by adding the provider to Table 9A.

In Table 9C.—Hospitals Redesignated as Rural Under Section 1886(d)(8)(E) of the Act—FY 2012, we erroneously listed provider 140167 in Table 9C. Therefore, we are correcting this error by removing provider 140167 from Table 9C.

In Table 12A.—LTCH PPS Wage Index for Urban Areas for Discharges Occurring From October 1, 2011 Through September 30, 2012 and Table 12B.—LTCH PPS Wage Index for Rural Areas for Discharges Occurring From October 1, 2011 Through September 30, 2012, we are correcting errors in the LTCH wage indices for 3 CSBAs (20020, 33740, and 19) as a result of the corrections we are making to the IPPS wage data that affects Tables 4A, 4B, and 4C described in this section of the document.

The corrections to the tables 2 through 9C discussed in this section of the correction document will be posted on the CMS Web site at http://www.cms.hhs.gov/AcuteInpatientPPS/01_overview.asp. Click on the link on the left side of the screen on titled, "FY 2012 IPPS Final Rule Home Page" or "Acute Inpatient—Files for Download."

The corrections to the tables 12A and 12B discussed in this section of the correction document will be posted on the CMS Web site at <http://www.cms.gov/LongTermCareHospitalPPS/LTCHPPSRN/list.asp> under the list item for regulation number CMS-1518-F.

III. Waiver of Proposed Rulemaking and 30-Day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the *Federal Register* to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the *Federal Register*. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

In our view, this document does not constitute a rulemaking that would be subject to the APA notice and comment or delayed effective date requirements. This document merely corrects typographical and technical errors in the preamble and addendum of the FY 2012 IPPS/FY 2012 LTCH PPS final rule and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this document is intended to ensure that the FY 2012 IPPS/FY 2012 LTCH PPS final rule accurately reflects the policies adopted in that rule.

In addition, even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to

incorporate the corrections in this document into the final rule or delaying the effective date would delay these corrections beyond the October 1 start of the fiscal year, and would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in our final rule.

Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2011-19719 of August 18, 2011 (76 FR 51476), make the following corrections:

1. On page 51745, third column—
a. Fourth full paragraph, lines 13 and 14, the footnote reference number “2” is corrected to read “59a”.

b. Footnote text at bottom of the column, after line 4, the footnotes are corrected by adding a footnote to read as follows:

“59a Klevens RM, Edwards JR, Richards CL, Horan TC, Gaynes RP, Pollock DA, Cardo DM. Estimating healthcare-associated infection and deaths in U.S. hospitals, 2002. Public Health Reports 2007; 122:160-166. Available at http://www.cdc.gov/ncidod/dhqp/pdf/hicpac/infections_deaths.pdf.”

2. On page 51746,
a. First column, first full paragraph, lines 19 through 21, the phrase “The TEP convened by the our” is corrected to read “The TEP convened by our”.

b. Third column, footnote text at bottom of column is corrected to read as follows:

“60 Klevens RM, Edwards JR, Richards CL, Horan TC, Gaynes RP, Pollock DA, Cardo DM. Estimating healthcare-associated infection and deaths in U.S. hospitals, 2002. Public Health Reports 2007; 122:160-166. Available at http://www.cdc.gov/ncidod/dhqp/pdf/hicpac/infections_deaths.pdf.”

3. On page 51747, third column, second full paragraph, line 3, the acronym “CLASBIs” is corrected to read as “CLABSI”.

4. On page 51748, second column, last paragraph, lines 20 through 21, the Web site link “<http://www.cdc.gov/nhsn/PDFs/pscManual/7pscCAUTICurrent.pdf>” is corrected to read “http://www.cdc.gov/nhsn/pdfs/pscmanual/4psc_clabscurrent.pdf”.

5. On page 51752, third column, last paragraph, last line, the figure “11” is corrected to read “over 20”.

6. On page 51754, third column—
a. First partial paragraph, line 4, the phrase “nursing home” is corrected to read as “skilled nursing facility”.

b. Second full paragraph, line 3 and 4, the phrase “using a CARE subset of standardized data elements to collect” is

corrected to read as “using a subset of standardized CARE data elements to collect”.

7. On page 51755, second column, first full paragraph, lines 9 and 10, the phrase “during the PAC-PRD” is corrected to read “during the Post Acute Care Payment Reform Demonstration (PAC-PRD).”

8. On page 51780, second column, fifth paragraph, line 9, the figure “80” is corrected to read “over 200”.

9. On page 51813, third column, sixth paragraph, line 6, the reference “CMS-1518-P” is corrected to read “CMS-1518-F”.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical—Insurance Program)

Dated: September 21, 2011.

Barbara J. Holland,

Deputy Executive Secretary to the Department, Department of Health Human Services.

[FR Doc. 2011-24669 Filed 9-23-11; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS-1351-CN]

RIN 0938-AQ29

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2012; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors in the final rule entitled “Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2012” that appeared in the August 8, 2011 Federal Register.

DATES: *Effective Date:* This correction is effective October 1, 2011.

FOR FURTHER INFORMATION CONTACT: John Kane, (410) 786-0557.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011-19544 of August 8, 2011 (76 FR 48486), there were three technical errors that are identified and corrected in the Correction of Errors section of this document. The

corrections in this correction document are effective as if they had been included in the August 8, 2011 Federal Register document. Accordingly, the corrections are effective October 1, 2011.

II. Summary of Errors

The Addendum to the Skilled Nursing Facility (SNF) Prospective Payment System (PPS) final rule (76 FR 48486, 48540) inadvertently included several technical errors in wage index values in Table A (“FY 2012 Wage Index for Urban Areas Based on CBSA Labor Market Areas”) and Table B (“FY 2012 Wage Index Based on CBSA Labor Market Areas for Rural Areas”). Tables A and B provide the urban and rural wage index values, respectively, that are used to calculate the labor-related portion of the FY 2012 payment rate for SNFs. We inadvertently omitted corrected wage and geographic classification data for two providers from the final FY 2012 wage index database that should have been included in the wage index calculation of the FY 2012 payment rates for SNFs. This resulted in incorrect wage index values being displayed in Table A for two CBSAs. Therefore, we are correcting the wage index values for those two CBSAs in Table A of the Addendum, in order to reflect the hospital wage index’s most current wage data. The first correction in Table A of the Addendum (76 FR 48546) involves the wage index for CBSA 20020 (Dothan, AL—Geneva County, AL—Henry County, AL—Houston County, AL), and reflects the receipt of revised wage data from an Alabama provider. The second correction in Table A of the Addendum (76 FR 48552) involves the wage index for CBSA 33740 (Monroe, LA—Ouachita Parish, LA—Union Parish, LA), and reflects a change in geographic classification for a Louisiana provider.

Finally, in Table B of the Addendum (76 FR 48561), we are correcting the wage index value for State Code 19 (Louisiana), in order to reflect the previously-cited change in geographic classification for a Louisiana provider. As these revisions involve only a limited number of individual entries in Tables A and B, we are not republishing these tables in their entirety in this document; however, we note that the corrected versions of both tables are available on the SNF PPS Web site, which can be accessed online at <http://www.cms.gov/SNFPPS/>.

III. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the Federal

Register to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if we find, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporate a statement of the finding and the reasons therefore in the document.

We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive this delay if we find good cause and publish in the notice an explanation of our good cause.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking because this document merely provides technical corrections to the FY 2012 SNF PPS final rule. We are not making substantive changes to our payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. This correction document is intended solely to ensure that the FY 2012 SNF PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe that undertaking further notice and comment rulemaking activity in connection with it would be unnecessary and contrary to the public interest.

Further, we believe a delayed effective date is unnecessary because this correction document merely corrects inadvertent technical errors. The changes noted above do not make any substantive changes to the SNF PPS payment methodologies or policies. Moreover, we regard imposing a delay in the effective date as being contrary to the public interest. We believe that it is in the public interest for providers to receive appropriate SNF PPS payments in as timely a manner as possible and to ensure that the FY 2012 SNF PPS final rule accurately reflects our payment methodologies, payment rates, and policies. Therefore, we find good cause to waive notice and comment procedures, as well as the 30-day delay in effective date.

IV. Correction of Errors

In FR Doc. 2011-19544 of August 8, 2011 (76 FR 48486), make the following corrections:

1. On page 48546, in Table A ("FY 2012 Wage Index for Urban Areas Based on CBSA Labor Market Areas"), in the

first set of columns, in the eighth row (CBSA 20020), third column, the wage index "0.7130" is corrected to read "0.7390".

2. On page 48552, in Table A, in the second set of columns, in the fifth row (CBSA 33740), third column, the wage index "0.7915" is corrected to read "0.7964".

3. On page 48561, in Table B ("FY 2012 Wage Index Based on CBSA Labor Market Areas for Rural Areas"), in the second set of columns, in the 19th row (State Code 19 (Louisiana)), third column, the wage index "0.7769" is corrected to read "0.7749".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 16, 2011.

Barbara J. Holland,
Deputy Executive Secretary to the
Department.

[FR Doc. 2011-24670 Filed 9-23-11; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-8199]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the *Federal Register* on a subsequent date.

DATES: Effective Dates: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or **FOR FURTHER INFORMATION, CONTACT** David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the *Federal Register*.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for

the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of

the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
West Virginia: Doddridge County, Unincorporated Areas	540024	July 30, 1975, Emerg; March 18, 1991, Reg; October 4, 2011, Susp.	Oct. 4, 2011	Oct. 4, 2011
West Union, Town of, Doddridge County.	540025	March 7, 1975, Emerg; March 18, 1991, Reg; October 4, 2011, Susp.	.....do	Do.
Region VI				
Texas:				
Abilene, City of, Jones County	485450	June 19, 1970, Emerg; July 23, 1971, Reg; October 4, 2011, Susp.	.....do	Do.
Anson, City of, Jones County	480401	March 7, 1975, Emerg; May 25, 1978, Reg; October 4, 2011, Susp.	.....do	Do.
Hamlin, City of, Jones County	480402	October 15, 1974, Emerg; July 1, 1987, Reg; October 4, 2011, Susp.	.....do	Do.
Hawley, City of, Jones County	480885	September 15, 1980, Emerg; July 1, 1987, Reg; October 4, 2011, Susp.	.....do	Do.
Jones County, Unincorporated Areas ...	480884	June 15, 2000, Emerg; N/A, Reg; October 4, 2011, Susp.	.....do	Do.
Region X				
Alaska:				
McGrath, City of, Yukon-Koyukuk Census Area.	020128	November 18, 2002, Emerg; N/A, Reg; October 4, 2011, Susp.	.....do	Do.

*-do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Sandra K. Knight,
Deputy Associate Administrator for
Mitigation, Department of Homeland
Security, Federal Emergency Management
Agency.

[FR Doc. 2011-24691 Filed 9-23-11; 8:45 am]

BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND
SECURITY**

**Federal Emergency Management
Agency**

44 CFR Part 65

[Docket ID FEMA-2011-0002]

**Changes in Flood Elevation
Determinations**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-
chance) Flood Elevations (BFEs) are
finalized for the communities listed
below. These modified BFEs will be
used to calculate flood insurance
premium rates for new buildings and
their contents.

DATES: The effective dates for these
modified BFEs are indicated on the
following table and revise the Flood
Insurance Rate Maps (FIRMs) in effect
for the listed communities prior to this
date.

ADDRESSES: The modified BFEs for each
community are available for inspection
at the office of the Chief Executive
Officer of each community. The
respective addresses are listed in the
table below.

FOR FURTHER INFORMATION CONTACT: Luis
Rodriguez, Chief, Engineering
Management Branch, Federal Insurance
and Mitigation Administration, Federal
Emergency Management Agency, 500 C
Street, SW., Washington, DC 20472,
(202) 646-4064, or (e-mail)
luis.rodriquez1@dhs.gov.

SUPPLEMENTARY INFORMATION: The
Federal Emergency Management Agency
(FEMA) makes the final determinations
listed below of the modified BFEs for
each community listed. These modified
BFEs have been published in
newspapers of local circulation and
ninety (90) days have elapsed since that
publication. The Deputy Federal
Insurance and Mitigation Administrator
has resolved any appeals resulting from
this notification.

The modified BFEs are not listed for
each community in this notice.
However, this final rule includes the
address of the Chief Executive Officer of
the community where the modified BFE
determinations are available for
inspection.

The modified BFEs are made pursuant
to section 206 of the Flood Disaster
Protection Act of 1973, 42 U.S.C. 4105,
and are in accordance with the National
Flood Insurance Act of 1968, 42 U.S.C.
4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently
effective community number is shown
and must be used for all new policies
and renewals.

The modified BFEs are the basis for
the floodplain management measures
that the community is required either to
adopt or to show evidence of being
already in effect in order to qualify or
to remain qualified for participation in
the National Flood Insurance Program
(NFIP).

These modified BFEs, together with
the floodplain management criteria
required by 44 CFR 60.3, are the
minimum that are required. They
should not be construed to mean that
the community must change any
existing ordinances that are more
stringent in their floodplain
management requirements. The
community may at any time enact
stricter requirements of its own or
pursuant to policies established by other
Federal, State, or regional entities.

These modified BFEs are used to meet
the floodplain management
requirements of the NFIP and also are

used to calculate the appropriate flood
insurance premium rates for new
buildings built after these elevations are
made final, and for the contents in those
buildings. The changes in BFEs are in
accordance with 44 CFR 65.4.

National Environmental Policy Act.
This final rule is categorically excluded
from the requirements of 44 CFR part
10, Environmental Consideration. An
environmental impact assessment has
not been prepared.

Regulatory Flexibility Act. As flood
elevation determinations are not within
the scope of the Regulatory Flexibility
Act, 5 U.S.C. 601-612, a regulatory
flexibility analysis is not required.

Regulatory Classification. This final
rule is not a significant regulatory action
under the criteria of section 3(f) of
Executive Order 12866 of September 30,
1993, Regulatory Planning and Review,
58 FR 51735.

Executive Order 13132, Federalism.
This final rule involves no policies that
have federalism implications under
Executive Order 13132, Federalism.

*Executive Order 12988, Civil Justice
Reform.* This final rule meets the
applicable standards of Executive Order
12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains,
Reporting and recordkeeping
requirements.

Accordingly, 44 CFR part 65 is
amended to read as follows:

PART 65—[AMENDED]

- 1. The authority citation for part 65
continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*;
Reorganization Plan No. 3 of 1978, 3 CFR,
1978 Comp., p. 329; E.O. 12127, 44 FR 19367,
3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

- 2. The tables published under the
authority of § 65.4 are amended as
follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Tuscaloosa, (FEMA Docket No.: B-1199).	City of Tuscaloosa (10-04-6941P).	April 4, 2011; April 11, 2011; <i>The Tuscaloosa News.</i>	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, 2201 University Boulevard, Tuscaloosa, AL 35401.	April 29, 2011	010203
Colorado: Arapahoe, (FEMA Docket No.: B-1199).	City of Aurora (10-08-0937P).	March 17, 2011; March 24, 2011; <i>The Aurora Sentinel.</i>	The Honorable Ed Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	March 10, 2011	080002
North Carolina: Alamance, (FEMA Docket No.: B-1172).	Unincorporated areas of Alamance County (10-04-6308P).	October 27, 2010; November 3, 2010; <i>The Times-News.</i>	Mr. Craig F. Honeycutt, Alamance County Manager, 124 West Elm Street, Graham, NC 27253.	March 3, 2011	370001
Ashe, (FEMA Docket No.: B-1195).	Unincorporated areas of Ashe County (10-04-3410P).	February 18, 2011; February 25, 2011; <i>The Jefferson Post.</i>	Mr. Dan McMillan, Ashe County Manager, 150 Government Circle, Suite 2500, Jefferson, NC 28640.	June 27, 2011	370007

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Caldwell, (FEMA Docket No.: B-1199).	Unincorporated areas of Caldwell County (10-04-7739P).	January 20, 2011; January 27, 2011; <i>The Lenoir News-Topic</i> .	Mr. Stan Kiser, Caldwell County Manager, P.O. Box 2200, 905 West Avenue Northwest, Lenoir, NC 28645.	May 27, 2011	370039
Columbus, (FEMA Docket No.: B-1195).	City of Whiteville (10-04-6817P).	February 24, 2011; March 3, 2011; <i>The News Reporter</i> .	The Honorable Terry Mann, Mayor, City of Whiteville, 317 South Madison Street, Whiteville, NC 28472.	February 17, 2011	370071
Columbus, (FEMA Docket No.: B-1195).	Unincorporated areas of Columbus County (10-04-6817P).	February 24, 2011; March 3, 2011; <i>The News Reporter</i> .	The Honorable Giles Byrd, Chairman, Columbus County Board of Commissioners, 111 Washington Street, Whiteville, NC 28472.	February 17, 2011	370305
Rutherford, (FEMA Docket No.: B-1195).	Village of Chimney Rock (10-04-3339P).	February 18, 2011; February 25, 2011; <i>The Daily Courier</i> .	The Honorable Barbara Meliski, Mayor, Village of Chimney Rock, P.O. Box 300, Chimney Rock, NC 28720.	February 11, 2011	370487
Wake, (FEMA Docket No.: B-1195).	City of Raleigh (10-04-3939P).	February 15, 2011; February 22, 2011; <i>The News & Observer</i> .	The Honorable Charles Meeker, Mayor, City of Raleigh, P.O. Box 590, 222 West Hargett Street, Raleigh, NC 27602.	June 22, 2011	370243
Texas: Tarrant, (FEMA Docket No.: B-1129).	City of Benbrook (09-06-3139P).	April 9, 2010; April 16, 2010; <i>The Star-Telegram</i> .	Mr. Andy Wayman, Benbrook City Manager, 911 Winscott Road, Benbrook, TX 76126.	April 1, 2010	480586

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 9, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011-24694 Filed 9-23-11; 8:45 am]

BILLING CODE 9110-12-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10-51; FCC 11-54]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Structure and Practices of the Video Relay Service Program, Report and Order (*Report and Order*). The information collection requirements were approved on September 16, 2011 by OMB.

DATES: 47 CFR 64.604(c)(5)(iii)(C)(2), (3), (4), and (7); 64.604(c)(5)(iii)(M); 64.604(c)(5)(iii)(N)(1)(v); and 64.604(c)(5)(iii)(N)(2), published at 76 FR 24393, May 2, 2011, and corrected on May 27, 2011, published at 76 FR 30841 are effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT:

Diane Mason, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418-7126, or e-mail Diane.Mason@fcc.gov.

SUPPLEMENTARY INFORMATION:

This document announces that, on September 16, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 64.604(c)(5)(iii)(C)(2), (3), (4), and (7); 64.604(c)(5)(iii)(M); 64.604(c)(5)(iii)(N)(1)(v); and 64.604(c)(5)(iii)(N)(2). The Commission publishes this document to announce the effective date of these rule sections. See, In the Matter of Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51; FCC 11-54, published at 76 FR 24393, May 2, 2011, and corrected on May 27, 2011, published at 76 FR 30841. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060-1145, in your correspondence. The Commission will also accept your comments via the Internet if you send them to PRA@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, October 1, 1995 and 44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on September 16, 2011, for the information collection requirements contained in the Commission's rules at 47 CFR 64.604(c)(5)(iii)(C)(2), (3), (4), and (7); 64.604(c)(5)(iii)(M); 64.604(c)(5)(iii)(N)(1)(v); and 64.604(c)(5)(iii)(N)(2).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The OMB Control Number is 3060-1145 and the total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060-1145.

OMB Approval Date: September 16, 2011.

OMB Expiration Date: September 30, 2014.

Title: Structure and Practices of the Video Relay Services Program; CG Docket No. 10-51.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 20 respondents; 1,423 responses.

Estimated Time per Response: .017 (1 minute) to 25 hours.

Frequency of Response: Annual, monthly, on occasion, one-time, and semi-annually reporting requirements; recordkeeping and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at Section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act, Public Law 101-336, 104 Stat. 327, 366-69.

Total Annual Burden: 4,632 hours.

Total Annual Cost: \$35,600.

Nature and Extent of Confidentiality:

An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 6, 2011, in document FCC 11-54, the Commission released a *Report and Order*, adopting final rules designed to eliminate the waste, fraud and abuse that has plagued the VRS program and had threatened its ability to continue serving Americans who use it and its long-term viability. The *Report and Order* contains information collection requirements with respect to the following eight requirements, all of which aims to ensure the sustainability and integrity of the TRS program and the TRS Fund. Though the *Report and Order* emphasizes VRS, many of the requirements also apply to other or all forms of TRS—which includes the adoption of the interim rule, several new information collection requirements; and all the proposed information collection requirements, except the “*Transparency and the Disclosure of Provider Financial and Call Data*” requirement, as previously proposed and published at 75 FR 51735, August 23, 2010.

(a) **Provider Certification Under Penalty of Perjury.** The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a TRS provider shall certify, under penalty of perjury, that: (1) Minutes submitted to the Interstate TRS Fund (Fund) administrator for compensation were handled in compliance with section 225 of the Act and the Commission’s rules and orders, and are not the result of impermissible financial incentives, or payments or kickbacks, to generate calls, and (2) cost and demand data submitted to the Fund administrator related to the determination of compensation rates or methodologies are true and correct.

(b) **Requiring Providers to Submit Information about New and Existing Call Centers.** VRS providers shall submit a written statement to the Commission and the TRS Fund administrator containing the locations of all of their call centers that handle VRS calls, including call centers located outside the United States, twice a year, on April 1st and October 1st. In addition to the street address of each call center, the rules require that these statements contain (1) The number of individual CAs and CA managers employed at each call center; and (2) the name and contact information (phone number and e-mail address) for the managers at each call center. (2) VRS providers shall notify the Commission and the TRS Fund administrator in writing at least 30 days prior to any change to their call centers’ locations, including the opening, closing, or relocation of any center.

(c) **Data Filed with the Fund Administrator to Support Payment Claims.** VRS providers shall provide the following data associated with each VRS call for which a VRS provider seeks compensation in its filing with the Fund Administrator: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; (9) the call center (by assigned center ID number) that handles the call; and (10) the URL address through which the call was initiated.

(2) All VRS and IP Relay providers shall submit speed of answer compliance data to the Fund administrator

(d) **Automated Call Data Collection.** TRS providers shall use an automated record keeping system to capture the following data when seeking compensation from the Fund: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times, at a minimum to the nearest second; (4) conversation start and end times, at a minimum to the nearest second; (5) incoming telephone number (if call originates with a telephone) and IP address (if call originates with an IP-based device) at the time of the call; (6) outbound telephone number and IP address (if call terminates to an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call.

(e) **Record Retention.** Internet-based TRS providers shall retain the following data that is used to support payment claims submitted to the Fund administrator for a minimum of five years, in an electronic format: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; and (9) the call center (by assigned center ID number) that handles the call.

(f) **Third-party Agreements.** (1) VRS providers shall maintain copies of all third-party contracts or agreements so that copies of these agreements will be available to the Commission and the TRS Fund administrator upon request. Such contracts or agreements shall provide detailed information about the nature of the services to be provided by the subcontractor.

(2) VRS providers shall describe all agreements in connection with marketing and outreach activities, including those involving sponsorships, financial endorsements, awards, and gifts made by the provider to any individual or entity, in the providers’ annual submissions to the TRS Fund administrator.

(g) **Whistleblower Protection.** TRS providers shall provide information about these TRS whistleblower protections, including the right to notify the Commission’s Office of Inspector General or its Enforcement Bureau, to all employees and contractors, in writing. Providers that already disseminate their internal business policies to their employees in writing (e.g. in employee handbooks, policies and procedures manuals, or bulletin board postings—either online or in hard copy) must also explicitly include these TRS whistleblower protections in those written materials.

(h) **Required Submission for Waiver Request.** Potential VRS providers wishing to receive a temporary waiver of the provider’s eligibility rules, shall provide, in writing, a description of the specific requirement(s) for which it is seeking a waiver, along with documentation demonstrating the applicant’s plan and ability to come into compliance with all of these requirements (other than the certification requirement) within a specified period of time, which shall not exceed three months from the date on which the rules become effective.

Evidence of the applicant's plan and ability to come into compliance with the new rules shall include the applicant's detailed plan for modifying its business structure and operations in order to meet the new requirements, along with submission of the following relevant documentation to support the waiver request:

- A copy of each deed or lease for each call center operated by the applicant;
- A list of individuals or entities that hold at least a 10 percent ownership share in the applicant's business and a description of the applicant's organizational structure, including the names of its executives, officers, partners, and board of directors;
- A list of all of the names of applicant's full-time and part-time employees;
- Proofs of purchase or license agreements for use of all equipment and/or technologies, including hardware and software, used by the applicant for its call center functions, including but not limited to, automatic call distribution (ACD) routing, call setup, mapping, call features, billing for compensation from the TRS fund, and registration;
- Copies of employment agreements for all of the provider's executives and CAs;
- A list of all financing arrangements pertaining to the provision of Internet-based relay service, including documentation on loans for equipment, inventory, property, promissory notes, and liens;
- Copies of all other agreements associated with the provision of Internet-based relay service; and;
- A list of all sponsorship arrangements (e.g., those providing financial support or in-kind interpreting or personnel service for social activities in exchange for brand marketing), including any associated agreements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011-24623 Filed 9-23-11; 8:45 am]

BILLING CODE 6712-01-P.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS-R9-MB-2011-0014; 91200-1231-9BPP-L2]

RIN 1018-AX34

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2011-12 season.

DATES: This rule is effective on September 24, 2011.

ADDRESSES: You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at <http://www.fws.gov/migratorybirds/>, or at <http://www.regulations.gov> at Docket No. FWS-R9-MB-2011-0014.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2011

On April 8, 2011, we published in the *Federal Register* (76 FR 19876) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2011-12 regulatory cycle relating to open public meetings and *Federal Register* notifications were also identified in the April 8 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings and that subsequent

documents would refer only to numbered items requiring attention.

On June 22, 2011, we published in the *Federal Register* (76 FR 36508) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 22 supplement also provided information on the 2011-12 regulatory schedule and announced the Service Regulations Committee (SRC) and summer (July) Flyway Council meetings.

On June 22 and 23, 2011, we held open meetings with the Flyway Council Consultants where the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2011-12 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2011-12 regular waterfowl seasons.

On July 26, 2011, we published in the *Federal Register* (76 FR 44730) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 30, 2011, we published in the *Federal Register* (76 FR 54052) a final rule which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. Subsequently, on September 1, 2011, we published a final rule in the *Federal Register* (76 FR 54658) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 27-28, 2011, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2011-12 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2011-12 late-season migratory bird hunting regulations in an August 26, 2011 *Federal Register* (76 FR 53536). We published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates,

hours, areas, and limits for 2011–12, in a September 21, 2011, **Federal Register**.

The final rule described here is the final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for 2011–12 and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that States previously deferred.

National Environmental Policy Act (NEPA) Consideration

NEPA considerations are covered by the programmatic document “Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSSES 88–14),” filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled “Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands” is available from the address indicated under the caption **ADDRESSES**.

In a notice, published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available either by writing to the address indicated under **ADDRESSES** or by viewing our Web site at <http://www.fws.gov/migratorybirds>.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that “The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act” (and) shall “insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *.”

Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued

existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies’ actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season.

For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of \$205–\$270 million. We also chose alternative 3 for the 2009–10 and the 2010–11 seasons. In the April 8 proposed rule, we proposed no changes to the season frameworks for the 2011–

12 season, and as such, we again considered these three alternatives. Population status information discussed in the August 26 proposed rule supported selection of alternative 3 for the 2011–12 season. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov> at Docket No. FWS–R9–MB–2011–0014.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce’s County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately \$1.2 billion at small businesses in 2008.

Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **ADDRESSES**) or from our Web site at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov> at Docket No. FWS–R9–MB–2011–0014.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of \$100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995

(44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations.

Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018-0023 (expires 4/30/2014). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018-0124 (expires 4/30/2013). A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking would not impose a cost of \$100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 8 *Federal Register*, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2011-12 migratory bird hunting season. The resulting proposals were contained in a separate August 8, 2011, proposed rule (76 FR 48694). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant

federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703-711), these regulations will take effect less than 30 days after publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 20, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703-712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-j; Pub.

L. 106-108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

Note: The following annual regulations provided for by §§ 20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

Check State Regulations for Additional Restrictions and Delineations of Geographical Areas—Special Restrictions May Apply on Federal and State Public Hunting Areas and Federal Indian Reservations

■ 2. Section 20.104 is amended by adding the entries for the following

States in alphabetical order to read as follows:

§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset,

except as otherwise restricted by State regulations. Area descriptions were published in the August 25, 2011 (76 FR 53536) and August 30, 2011 (76 FR 54052), Federal Registers.

Note: The following seasons are in addition to the seasons published previously in the September 1, 2011, Federal Register (76 FR 54658).

	Sora and Virginia rails	Clapper and King rails	Woodcock	Common snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16

ATLANTIC FLYWAY

Massachusetts (5)	Sept. 1–Nov. 9	Closed	Oct. 5–Oct. 29 & Oct. 31–Nov. 19.	Sept. 1–Dec. 16.
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MISSISSIPPI FLYWAY

<i>Louisiana:</i>				
West Zone	Sept. 10–Sept. 25 & Nov. 12–Jan. 4.	Sept. 10–Sept. 25 & Nov. 12–Jan. 4.	Dec. 18–Jan. 31	Nov. 5–Dec. 7 & Dec. 17–Feb. 28.
East Zone	Sept. 10–Sept. 25 & Nov. 12–Jan. 4.	Sept. 10–Sept. 25 & Nov. 12–Jan. 4.	Dec. 18–Jan. 31	Nov. 5–Nov. 30 & Dec. 10–Feb. 28.
<i>Tennessee:</i>				
Reelfoot Zone	Nov. 12–Nov. 13 & Dec. 3–Jan. 29.	Closed	Oct. 29–Dec. 12	Nov. 15–Feb. 29.
State Zone	Nov. 26–Nov. 27 & Dec. 3–Jan. 29.	Closed	Oct. 29–Dec. 12	Nov. 15–Feb. 29.
<i>Wisconsin:</i>				
North Zone	Sept. 24–Nov. 22	Closed	Sept. 24–Nov. 7	Sept. 24–Nov. 22.
South Zone	Oct. 1–Oct. 9* & Oct. 15–Dec. 4.	Closed	Sept. 24–Nov. 7	Oct. 1–Oct. 9 & Oct. 15–Dec. 4.
Mississippi River Zone	Sept. 24–Oct. 2 & Oct. 15–Dec. 4.	Closed	Sept. 24–Nov. 7	Sept. 24–Oct. 2 & Oct. 15–Dec. 4.

PACIFIC FLYWAY

<i>Arizona (18):</i>				
North Zone	Closed	Closed	Closed	Oct. 7–Jan. 15.
South Zone	Closed	Closed	Closed	Oct. 21–Jan. 29.
<i>Idaho:</i>				
Zone 1 & 2	Closed	Closed	Closed	Oct. 1–Jan. 13.
Zone 3	Closed	Closed	Closed	Oct. 15–Jan. 27.
<i>Nevada:</i>				
Northeast Zone	Closed	Closed	Closed	Sept. 24–Jan. 6.
Northwest Zone	Closed	Closed	Closed	Oct. 15–Jan. 27.
South Zone (19)	Closed	Closed	Closed	Oct. 15–Jan. 27.
<i>Oregon:</i>				
Zone 1	Closed	Closed	Closed	Nov. 5–Feb. 19.
Zone 2	Closed	Closed	Closed	Oct. 8–Nov. 27 & Nov. 30–Jan. 22.

Washington:

	Sora and Virginia rails	Clapper and King rails	Woodcock	Common snipe
East Zone	Closed	Closed	Closed	Oct. 15–Oct. 19 & Oct. 22–Jan. 29.
West Zone	Closed	Closed	Closed	Oct. 15–Oct. 19 & Oct. 22–Jan. 29.

- (1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
- (2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In *Connecticut, Delaware, Maryland, and New Jersey*, the limits for clapper and king rails are 10 daily and 20 in possession. See also footnote (6) below.
- (5) In *Massachusetts*, the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.
- (16) In *Nebraska and New Mexico*, the rail limits are 10 daily and 20 in possession.
- (18) In *Arizona*, Ashurst Lake in Unit 5B is closed to common snipe hunting.
- (19) In *Nevada*, the snipe season in the Moapa Valley portion of the Overton Wildlife Management Area is only open November 5 to January 27.

■ 3. In § 20.105, paragraphs (a), (b), and (f) are amended by adding the entries for the following States in alphabetical order and paragraph (e) is revised to read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and

hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations.

Area descriptions were published in the August 25, 2011 (76 FR 53536) and August 30, 2011 (76 FR 5405225), **Federal Registers**.

(a) *Common Moorhens and Purple Gallinules (Atlantic, Mississippi, and Central Flyways)*

Note: The following seasons are in addition to the seasons published previously in the September 1, 2011, **Federal Register** (76 FR 54658). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Georgia	Nov. 19–Nov. 27 &	15	30
	Dec. 10–Jan. 29	15	30
Virginia	Oct. 6–Oct. 10 &	15	30
	Nov. 19–Dec. 3 &	15	30
	Dec. 10–Jan. 28	15	30
West Virginia	Oct. 1–Oct. 8 &	15	30
	Nov. 14–Nov. 19 &	15	30
	Dec. 14–Jan. 28	15	30
MISSISSIPPI FLYWAY			
Louisiana	Sept. 10–Sept. 25 &	15	30
	Nov. 12–Jan. 4	15	30
Michigan:			
North Zone	Sept. 24–Nov. 18 &	1	2
	Nov. 24–Nov. 27	1	2
Middle Zone	Oct. 1–Nov. 27 &	1	2
	Dec. 3–Dec. 4	1	2
South Zone	Oct. 8–Dec. 4 &	1	2
	Dec. 10–Dec. 11	1	2
Minnesota (3):			
North Zone	Sept. 24–Nov. 22	15	30
South Zone	Sept. 24–Sept 25 &	15	30
	Oct. 1–Nov. 27	15	30
Tennessee:			
Reelfoot Zone	Nov. 12–Nov. 13 &	15	30
	Dec. 3–Jan. 29	15	30
State Zone	Nov. 26–Nov. 27 &	15	30

	Season dates	Limits	
		Bag	Possession
<i>Wisconsin:</i>	Dec. 3–Jan. 29	15	30
North Zone	Sept. 24–Nov. 22	15	30
South Zone	Oct. 1–Oct. 9 &	15	30
	Oct. 15–Dec. 4	15	30
Mississippi River Zone	Sept. 24–Oct. 2 &	15	30
	Oct. 15–Dec. 4	15	30

PACIFIC FLYWAY

All States Seasons are in aggregate with coots and listed in paragraph (e).

(3) In *Minnesota*, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

(b) *Sea Ducks (Scoter, Eider, and Long-Tailed Ducks in Atlantic Flyway)*

September 1, 2011, **Federal Register** (76 FR 54658).

4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

Note: The following seasons are in addition to the seasons published previously in the

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and long-tailed ducks of which no more than

	Season dates	Limits	
		Bag	Possession
<i>Georgia</i>	Nov. 19–Nov. 27 &	7	14
	Dec. 10–Jan. 29	7	14
<i>Maryland</i>	Oct. 1–Jan. 28	5	10
<i>Massachusetts</i> (4)	Oct. 8–Jan. 31	7	14
<i>North Carolina</i>	Oct. 1–Jan. 31	7	14
<i>South Carolina</i>	Oct. 15–Jan. 29	7	14
<i>Virginia</i>	Oct. 6–Jan. 31	7	14

Note: Notwithstanding the provisions of this part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in *Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland* in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(4) In *Massachusetts*, the daily bag limit may include no more than 4 eiders (only 1 of which may be a hen) and 4 long-tailed ducks.

* * * * *
(e) *Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules*

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine,

Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross's geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other geese except light geese.

ATLANTIC FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (2 hen mallards), 2 scaup, 1 black duck, 2 pintails, 1 canvasback, 1 mottled duck, 3 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.
 Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession

and may include no more than 2 hooded mergansers daily and 4 in possession. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which

only 2 daily and 4 in possession may be hooded mergansers.

	Season dates	Limits	
		Bag	Possession
<i>Connecticut</i>			
Ducks and Mergansers:		6	12
North Zone	Oct. 12–Oct. 22 & Nov. 9–Jan. 5		
South Zone	Oct. 12–Oct. 15 & Nov. 18–Jan. 21		
Coots	Same as for Ducks	15	30
Canada Geese:			
AFRP Unit	Oct. 12–Oct. 22 & Nov. 9–Jan. 21 & Feb. 9–Feb. 15	5 5 5	10 10 10
NAP H-Unit	Oct. 12–Oct. 25 & Nov. 21–Jan. 14	2 2	4 4
AP Unit	Oct. 31–Nov. 5 & Nov. 24–Jan. 7	3 3	6 6
Special Season	Jan. 16–Feb. 15	5	10
Light Geese:			
North Zone	Oct. 1–Jan. 14 & Feb. 22–Mar. 10	25 25	
South Zone	Oct. 1–Nov. 30 & Jan. 7–Mar. 10	25 25	
Brant:			
North Zone	Nov. 9–Jan. 5	2	4
South Zone	Nov. 25–Jan. 21	2	4
<i>Delaware</i>			
Ducks	Oct. 21–Oct. 29 & Nov. 21–Nov. 26 & Dec. 7–Jan. 28	6 6 6	12 12 12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Nov. 21–Nov. 26 & Dec. 15–Jan. 28	2 2	4 4
Light Geese (1)	Oct. 1–Jan. 31	25	
Brant	Dec. 2–Jan. 28	2	4
<i>Florida</i>			
Ducks	Nov. 19–Nov. 27 & Dec. 10–Jan. 29	6 6	12 12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Nov. 19–Nov. 27 & Dec. 1–Jan. 30	5 5	10 10
Light Geese	Same as for Ducks	15	
<i>Georgia</i>			
Ducks	Nov. 19–Nov. 27 & Dec. 10–Jan. 29	6 6	12 12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese (special season)	Same as for Ducks	5	10
Light Geese	Same as for Ducks	5	10
Brant	Closed		
<i>Maine</i>			
Ducks (2):		6	12
North Zone	Sept. 26–Dec. 3		
South Zone	Oct. 1–Oct. 22 & Nov. 8–Dec. 24		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	5	10
Canada Geese:			
North Zone	Oct. 1–Dec. 9	2	4
South Zone	Same as for Ducks	2	4
Light Geese	Oct. 1–Jan. 31	25	
Brant:			
North Zone	Oct. 1–Nov. 28	2	4
South Zone	Oct. 1–Oct. 22 & Nov. 8–Dec. 13	2 2	4 4
<i>Maryland</i>			

	Season dates	Limits	
		Bag	Possession
Ducks and Mergansers (3)	Oct. 15–Oct. 22 &	6	12
	Nov. 12–Nov. 25 &	6	12
	Dec. 13–Jan. 28	6	12
Coots	Same as for Ducks	15	30
Canada Geese:			
RP Zone	Nov. 16–Nov. 25 &	5	10
	Dec. 15–Mar. 3	5	10
AP Zone	Nov. 19–Nov. 25 &	2	4
	Dec. 15–Jan. 28	2	4
Light Geese	Oct. 8–Nov. 25 &	25	
	Dec. 12–Jan. 28	25	
Brant	Nov. 17–Nov. 25 &	2	4
	Dec. 12–Jan. 28	2	4
<i>Massachusetts</i>			
Ducks (4):		6	12
Western Zone	Oct. 12–Nov. 26 &		
	Dec. 10–Jan. 2		
Central Zone	Oct. 13–Nov. 26 &		
	Dec. 15–Jan. 7		
Coastal Zone	Oct. 14–Oct. 22 &		
	Nov. 17–Jan. 16		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
NAP Zone:			
Central Zone	Oct. 13–Nov. 26 &	2	4
	Dec. 15–Jan. 7	2	4
(Special season)	Jan. 16–Feb. 15	5	10
Coastal Zone	Oct. 14–Oct. 22 &	2	4
	Nov. 17–Jan. 16	2	4
(Special season) (5)	Jan. 17–Feb. 15	5	10
AP Zone	Oct. 20–Nov. 26 &	3	6
	Dec. 10–Dec. 23	3	6
Light Geese:			
Western Zone	Same as for Ducks	15	30
Central Zone	Same as for Ducks &	15	30
	Jan. 15–Feb. 15	15	30
Coastal Zone	Same as for Ducks &	15	30
	Jan. 17–Feb. 15	15	30
Brant:			
Western & Central Zone	Closed		
Coastal Zone	Nov. 17–Nov. 26 &	2	4
	Dec. 15–Jan. 31	2	4
<i>New Hampshire</i>			
Ducks:		6	12
Inland Zone	Oct. 4–Nov. 6 &		
	Nov. 23–Dec. 18		
Coastal Zone	Oct. 5–Oct. 16 &		
	Nov. 23–Jan. 9		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Inland Zone	Same as for Ducks	2	4
Coastal Zone	Same as for Ducks	2	4
Light Geese:			
Inland Zone	Oct. 4–Dec. 18	25	
Coastal Zone	Oct. 5–Jan. 9	25	
Brant:			
Inland Zone	Oct. 4–Nov. 22	2	4
Coastal Zone	Oct. 5–Nov. 23	2	4
<i>New Jersey</i>			
Ducks:		6	12
North Zone	Oct. 8–Oct. 27 &		
	Nov. 12–Dec. 31		
South Zone	Oct. 15–Oct. 29 &		
	Nov. 15–Jan. 7		
Coastal Zone	Nov. 5–Nov. 12 &		
	Nov. 24–Jan. 24		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada and White-fronted Geese:			
North Zone	Nov. 12–Nov. 26 &	3	6

	Season dates	Limits	
		Bag	Possession
South Zone	Dec. 10-Jan. 16	3	6
	Nov. 19-Dec 3 &	3	6
Coastal Zone	Dec. 10-Jan. 16	3	6
	Nov. 24-Dec. 3 &	3	6
(Special season)	Dec. 6-Jan. 16	3	6
Light Geese:	Jan. 17-Feb. 15	5	10
North Zone	Oct. 15-Feb. 15	25	
South Zone	Oct. 15-Feb. 15	25	
Coastal Zone	Oct. 15-Feb. 15	25	
Brant:			
North Zone	Oct. 8-Oct. 27 &	2	4
	Nov. 24-Dec. 31	2	4
South Zone	Oct. 15-Oct. 29 &	2	4
	Nov. 19-Dec. 31	2	4
Coastal Zone	Nov. 5-Nov. 12 &	2	4
	Nov. 24-Jan. 12	2	4
New York			
Ducks and Mergansers:		6	12
Long Island Zone	Nov. 24-Nov. 27 &		
	Dec. 5-Jan. 29		
Lake Champlain Zone	Oct. 12-Oct. 16 &		
	Oct. 29-Dec. 22		
Northeastern Zone	Oct. 1-Oct. 10 &		
	Oct. 22-Dec. 10		
Southeastern Zone	Oct. 8-Oct. 16 &		
	Nov. 5-Dec. 25		
Western Zone	Oct. 22-Dec. 5 &		
	Dec. 26-Jan. 9		
Coots	Same as for Ducks	15	30
Canada Geese:			
Western Long Island (AFRP)	Nov. 24-Nov. 27 &	8	16
	Dec. 1-Mar. 10	8	16
Central Long Island (NAP-L)	Nov. 24-Nov. 27 &	3	6
	Dec. 1-Feb. 4	3	6
Eastern Long Island (NAP-H)	Nov. 24-Nov. 27 &	2	4
	Dec. 5-Jan. 29	2	4
Lake Champlain (AP) Zone	Oct. 20-Dec. 3	3	6
Northeast (AP) Zone	Oct. 22-Dec. 5	3	6
East Central (AP) Zone	Oct. 22-Nov. 18 &	3	6
	Nov. 26-Dec. 12	3	6
Hudson Valley (AP) Zone	Oct. 22-Nov. 18 &	3	6
	Dec. 17-Jan. 2	3	6
West Central (AP) Zone	Oct. 22-Nov. 20 &	3	6
	Dec. 26-Jan. 9	3	6
South (AFRP)	Oct. 22-Dec. 10 &	5	10
	Dec. 26-Jan. 9 &	5	10
	Feb. 25-Mar. 10	5	10
(Special season)	Feb. 5-Feb. 15	5	10
Light Geese (6):			
Long Island Zone	Nov. 24-Mar. 9	25	
Lake Champlain Zone	Oct. 1-Dec. 29	25	
Northeastern Zone	Oct. 1-Dec. 31 &	25	
	Feb. 25-Mar. 10	25	
Southeastern Zone	Oct. 1-Jan. 5 &	25	
	Mar. 1-Mar. 10	25	
Western Zone	Oct. 22-Dec. 10 &	25	
	Dec. 26-Jan. 9 &	25	
	Jan. 29-Mar. 10	25	
Brant:			
Long Island Zone	Nov. 24-Nov. 27 &	2	4
	Dec. 15-Jan. 29	2	4
Lake Champlain Zone	Oct. 12-Nov. 30	2	4
Northeastern Zone	Oct. 1-Nov. 19	2	4
Southeastern Zone	Oct. 8-Nov. 26	2	4
Western Zone	Oct. 2-Nov. 20	2	4
North Carolina			
Ducks (7)	Oct. 5-Oct. 8 &	6	12
	Nov. 12-Dec. 3 &	6	12
	Dec. 17-Jan. 28	6	12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30

	Season dates	Limits	
		Bag	Possession
Canada Geese:			
RP Hunt Zone	Oct. 5–Oct. 15 & Nov. 12–Dec. 3 & Dec. 17–Feb. 4	5 5 5	10 10 10
SJBP Hunt Zone	Oct. 5–Nov. 4 & Nov. 12–Dec. 31	5 5	10 10
Northeast Hunt Zone (8)	Jan. 21–Jan. 28	1	2
Light Geese (9)	Oct. 19–Oct. 22 & Nov. 12–Mar. 10	25 25	
Brant	Nov. 19–Dec. 3 & Dec. 17–Jan. 28	2 2	4 4
Pennsylvania			
Ducks:		6	12
North Zone	Oct. 8–Oct. 22 & Nov. 11–Jan. 4		
South Zone	Oct. 15–Oct. 22 & Nov. 15–Jan. 14		
Northwest Zone	Oct. 8–Dec. 16		
Lake Erie Zone	Oct. 24–Dec. 31		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
AP Zone	Nov. 15–Nov. 26 & Dec. 17–Jan. 25	3 3	6 6
SJBP Zone	Oct. 22–Nov. 26 & Dec. 12–Jan. 25	3 3	6 6
Resident (RP) Zone	Oct. 22–Oct. 29 & Nov. 11–Nov. 26 & Dec. 20–Feb. 25	5 5 5	10 10 10
Light Geese	Oct. 25–Jan. 25	25	
Brant	Oct. 8–Dec. 5	2	4
Rhode Island			
Ducks	Oct. 7–Oct. 10 & Nov. 23–Nov. 27 & Dec. 3–Jan. 22	6 6 6	12 12 12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Nov. 19–Nov. 27 & Dec. 3–Jan. 22 Jan. 27–Feb. 12	2 2 5	4 4 10
(Special season)	Jan. 27–Feb. 12	5	10
Light Geese	Oct. 8–Jan. 22	15	
Brant	Dec. 4–Jan. 22	2	4
South Carolina			
Ducks (10)(11)	Nov. 19–Nov. 26 & Dec. 3 only & Dec. 10–Jan. 29	6 6 6	12 12 12
Mergansers (12)	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada and White-fronted Geese (13)	Nov. 19–Nov. 26 & Dec. 3–Feb. 3 & Feb. 6–Feb. 9	5 5 5	10 10 10
Light Geese	Same as for Ducks	25	
Brant	Dec. 11–Jan. 29	2	4
Vermont			
Ducks:		6	12
Lake Champlain Zone	Oct. 12–Oct 16 & Oct. 29–Dec. 22		
Interior Zone	Oct. 12–Dec. 10		
Connecticut River Zone	Oct. 4–Nov. 6 & Nov. 23–Dec. 18		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Lake Champlain Zone	Oct. 20–Dec. 3	3	6
Interior Zone	Oct. 20–Dec. 3	3	6
Connecticut River Zone	Oct. 4–Nov. 6 & Nov. 23–Dec. 18	2 2	4 4
Light Geese:			
Lake Champlain Zone	Oct. 1–Dec. 29	25	
Interior Zone	Oct. 1–Dec. 29	25	
Connecticut River Zone	Oct. 4–Dec. 18	25	
Brant:			

	Season dates	Limits	
		Bag	Possession
Lake Champlain Zone	Oct. 12–Nov. 30	2	4
Interior Zone	Oct. 12–Nov. 30	2	4
Connecticut River Zone	Oct. 4–Nov. 22	2	4
<i>Virginia</i>			
Ducks (14)	Oct. 6–Oct. 10 &	6	12
	Nov. 19–Dec. 3 &	6	12
	Dec. 10–Jan. 28	6	12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Eastern (AP) Zone	Nov. 19–Dec. 3 &	2	4
	Dec. 23–Jan. 28	2	4
Western (SBJP) Zone	Nov. 19–Dec. 3 &	3	6
	Dec. 15–Jan. 14 &	3	6
(Special season)	Jan. 16–Feb. 15	5	10
Western (RP) Zone	Nov. 19–Dec. 3 &	5	10
	Dec. 10–Feb. 25	5	10
Light Geese	Oct. 6–Feb. 4	25	
Brant	Nov. 19–Nov. 26 &	2	4
	Dec. 10–Jan. 28	2	4
<i>West Virginia</i>			
Ducks (15)	Oct. 1–Oct. 8 &	6	12
	Nov. 14–Nov. 19 &	6	12
	Dec. 14–Jan. 28	6	12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Oct. 1–Oct. 29 &	5	10
	Dec. 12–Jan. 31	5	10
Light Geese	Same as for Canada Geese	5	10
Brant	Dec. 14–Jan. 28	2	4

- (1) In *Delaware*, the Bombay Hook NWR snow goose season is open Mondays, Wednesdays, and Fridays only.
- (2) In *Maine*, the daily bag limit may include no more than 4 of any species, with no more than 8 of any one species in possession. The season for Barrow's goldeneye is closed.
- (3) In *Maryland*, the black duck season is closed October 15 through October 22.
- (4) In *Massachusetts*, the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.
- (5) In *Massachusetts*, the special season in the Coastal Zone is restricted to that portion of the Coastal Zone north of the Cape Cod Canal.
- (6) In *New York*, light geese may be taken with the aid of recorded or electrically amplified calls in any area or zone when all other waterfowl seasons are closed.
- (7) In *North Carolina*, the season is closed for black ducks October 5 through October 8 and November 12 through November 18. The daily bag limit for black and mottled ducks is combined with no more than 1 allowed in the daily bag.
- (8) In *North Carolina*, a permit is required to hunt Canada geese in the Northeast Hunt Zone.
- (9) In *North Carolina*, electronic calls and unplugged shotguns are allowed for light geese from February 6 through March 10.
- (10) In *South Carolina*, the daily bag limit of 6 may not exceed 1 black-bellied whistling duck, and 1 black duck or 1 mottled duck in the aggregate.
- (11) In *South Carolina*, on December 3, 2011, only youth less than 18 years of age may hunt, but they must be accompanied by an adult of at least 21 years of age who is fully licensed, including a Federal Waterfowl Stamp, State waterfowl stamp, and HIP permit. Youth who are 16 and 17 years of age, who hunt, must possess a Federal Waterfowl Stamp and HIP permit.
- (12) In *South Carolina*, the daily bag limit for mergansers may include no more than 1 hooded merganser.
- (13) In *South Carolina*, the daily bag limit may include no more than 2 white-fronted geese.
- (14) In *Virginia*, the season is closed for black ducks October 6 through October 10.
- (15) In *West Virginia*, the daily bag limit may include no more than 4 long-tailed ducks and the season is closed for eiders, whistling ducks, and mottled ducks.

MISSISSIPPI FLYWAY

Flyway-Wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black

duck, 2 pintails, 1 canvasback, 2 redheads, 2 scaup, and 3 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 2 hooded

mergansers daily and 4 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 daily and 4 in possession may be hooded mergansers.

	Season dates	Limits	
		Bag	Possession
<i>Alabama</i>			
Ducks		6	12
North Zone	Nov. 25–Nov. 26 &		
	Dec. 3–Jan. 29		
South Zone	Same as North Zone		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30

	Season dates	Limits	
		Bag	Possession
Dark Geese:			
North Zone:			
SJBP Zone	Sept. 24–Oct. 5 &	2	4
	Dec. 3–Jan. 29	2	4
Rest of North Zone	Same as SJBP Zone	2	4
South Zone	Same as Rest of North Zone	2	4
Light Geese:			
North Zone:			
SJBP Zone	Same as Rest of North Zone	5	5
Monroe and Escambia Counties	Sept. 24–Oct. 5 &	5	5
	Oct. 29–Nov. 13 &	5	10
	Dec. 3–Jan. 29	5	5
Rest of North Zone	Same as for Dark Geese	5	5
South Zone	Same as for Dark Geese	5	5
Arkansas			
Ducks	Nov. 19–Nov. 27 &	6	12
	Dec. 8–Dec. 23 &	6	12
	Dec. 26–Jan. 29	6	12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Northwest Zone			
	Sept. 24–Oct. 3 &	2	4
	Nov. 19–Jan. 29	2	4
Remainder of State	Nov. 19–Jan. 29	2	4
White-fronted Geese	Nov. 19–Jan. 29	2	4
Brant	Closed		
Light Geese	Nov. 5–Jan. 29	20	
Illinois			
Ducks		6	12
North Zone			
	Oct. 15–Dec. 13		
Central Zone	Oct. 22–Dec. 20		
South Central Zone	Nov. 12–Jan. 10		
South Zone	Nov. 24–Jan. 22		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
North Zone			
	Oct. 15–Jan. 7	2	4
Central Zone	Oct. 22–Nov. 6 &	2	4
	Nov. 24–Jan. 31	2	4
South Central Zone	Nov. 12–Nov. 27 &	2	4
	Dec. 13–Jan. 31	2	4
South Zone	Nov. 24–Nov. 27 &	2	4
	Dec. 1–Jan. 31	2	4
White-fronted Geese:			
North Zone			
	Oct. 26–Jan. 7	2	4
Central Zone	Nov. 19–Jan. 31	2	4
South Central Zone	Nov. 12–Nov. 27 &	2	4
	Dec. 5–Jan. 31	2	4
South Zone	Nov. 24–Jan. 31	2	4
Brant	Same as for Light Geese	1	2
Light Geese:			
North Zone			
	Oct. 15–Jan. 7	20	
Central Zone	Oct. 22–Jan. 31	20	
South Central Zone	Nov. 12–Jan. 31	20	
South Zone	Nov. 24–Jan. 31	20	
Indiana			
Ducks		6	12
North Zone			
	Oct. 15–Dec. 11 &		
	Dec. 24–Dec. 25		
South Zone	Oct. 22–Oct. 30 &		
	Nov. 23–Jan. 12		
Ohio River Zone	Oct. 29–Oct. 30 &		
	Nov. 26–Jan. 22		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
North Zone			
	Oct. 15–Nov. 6 &	2	4
	Nov. 23–Jan. 8 &	2	4
	Jan. 14–Jan. 17	2	4
South Zone	Oct. 22–Oct. 30 &	2	4
	Nov. 23–Jan. 26	2	4
Ohio River Zone	Oct. 29–Oct. 30 &	2	4

	Season dates	Limits	
		Bag	Possession
Late Season Zone	Nov. 21-Jan. 31	2	4
White-fronted Geese	Feb. 1-Feb. 15	5	10
	Oct. 15-Nov. 6 &	1	2
	Nov. 23-Jan. 26	1	2
Brant	Oct. 15-Jan. 27	1	2
Light Geese	Oct. 15-Jan. 27	20	2
<i>Iowa</i>			
Ducks		6	12
North Duck Zone	Sept. 17-Sept. 21 & Oct. 15-Dec. 8		
South Duck Zone	Sept. 17-Sept. 21 & Oct. 22-Dec. 15		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
North Goose Zone	Sept. 24-Oct. 9 & Oct. 15-Oct. 31 & Nov. 1-Jan. 4	2 2 3	4 4 6
South Goose Zone	Oct. 1-Oct. 16 & Oct. 22-Oct. 31 & Nov. 1-Jan. 11	2 2 3	4 4 6
White-fronted Geese:			
North Goose Zone	Sept. 24-Dec. 6	2	4
South Goose Zone	Oct. 1-Dec. 13	2	4
Brant:			
North Goose Zone	Same as for Canada geese	1	2
South Goose Zone	Same as for Canada geese	1	2
Light Geese:			
North Zone	Sept. 24-Jan. 8	20	
South Goose Zone	Oct. 1-Jan. 13	20	
<i>Kentucky</i>			
Ducks:		6	12
West Zone	Nov. 24-Nov. 27 & Dec. 5-Jan. 29		
East Zone	Same as for West Zone		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Nov. 23-Jan. 31	2	4
White-fronted Geese	Nov. 23-Jan. 31	2	4
Brant	Nov. 23-Jan. 31	2	4
Light Geese	Nov. 23-Jan. 31	20	
<i>Louisiana</i>			
Ducks:		6	12
West Zone	Nov. 12-Dec. 4 & Dec. 17-Jan. 22		
East Zone (including Catahoula Lake)	Nov. 19-Nov. 27 & Dec. 10-Jan. 29		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese (1)	Dec. 17-Jan. 29	1	2
White-fronted (1):			
West Zone	Nov. 12-Dec. 4 & Dec. 17-Feb. 5	2 2	4 4
East Zone	Nov. 5-Nov. 27 & Dec. 10-Jan. 29	2 2	4 4
Brant	Closed		
Light Geese	Same as for White-fronted	20	
<i>Michigan</i>			
Ducks (2)		6	12
North Zone	Sept. 24-Nov. 18 & Nov. 24-Nov. 27		
Middle Zone	Oct. 1-Nov. 27 & Dec. 3-Dec. 4		
South Zone	Oct. 8-Dec. 4 & Dec. 10-Dec. 11		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
North Zone	Sept. 17-Oct. 31	2	4
Middle Zone	Oct. 1-Nov. 8 & Nov. 24-Nov. 27 & Dec. 3-Dec. 4	2 2 2	4 4 4

	Season dates	Limits	
		Bag	Possession
South Zone:			
Muskegon Wastewater GMU	Oct. 11–Nov. 13 &	2	4
	Dec. 1–Dec. 11	2	4
Allegan County GMU	Nov. 12–Nov. 30 &	2	4
	Dec. 10–Dec. 20 &	2	4
	Dec. 31–Jan. 14	2	4
Saginaw County GMU	Oct. 8–Nov. 10 &	2	4
	Nov. 24–Dec. 4 &	2	4
	Dec. 31–Jan. 29	2	4
Tuscola/Huron GMU	Same as Saginaw County GMU	2	4
Remainder of South Zone	Oct. 8–Nov. 10 &	2	4
	Nov. 24–Dec. 4 &	2	4
	Dec. 31–Jan. 29	5	10
White-fronted Geese and Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	20	60
Minnesota			
Ducks:			
North Duck Zone	Sept. 24–Nov. 22	6	12
South Duck Zone	Sept. 24–Sept. 25 &	6	12
	Oct. 1–Nov. 27	6	12
Mergansers	Same as for Ducks	5	10
Coots (3)	Same as for Ducks	15	30
Geese:			
North Duck Zone:	Sept. 24–Dec. 17		
Canada		3	6
White-fronted and Brant		1	2
Light Geese		20	40
South Duck Zone:	Sept. 24–Sept. 25		
	Oct. 1–Dec. 22		
Canada		3	6
White-fronted and Brant		1	2
Light Geese		20	40
Rochester Zone:	Sept. 24–Sept. 25 &		
	Oct. 1–Nov. 27 &		
	Dec. 8–Jan. 1		
Canada		3	6
White-fronted and Brant		1	2
Light Geese		20	40
Mississippi			
Ducks			
	Nov. 25–Nov. 27 &	6	12
	Dec. 2–Dec. 4 &	6	12
	Dec. 7–Jan. 29	6	12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Nov. 21–Jan. 29	3	6
White-fronted	Nov. 17–Jan. 29	2	4
Brant	Same as for Canada geese	2	4
Light Geese	Same as for White-fronted	20	
Missouri			
Ducks and Mergansers			
North Zone	Oct. 29–Dec. 27		
Middle Zone	Nov. 5–Jan. 3		
South Zone	Nov. 24–Jan. 22		
Coots	Same as for Ducks	15	30
Canada Geese	Oct. 1–Oct. 9 &	3	6
	Nov. 24–Jan. 31	3	6
White-fronted Geese	Nov. 24–Jan. 31	2	4
Brant	Same as for Canada geese	1	2
Light Geese	Oct. 29–Jan. 31	20	
Ohio			
Ducks (2)			
Lake Erie Marsh Zone	Oct. 15–Oct. 30 &		
	Nov. 12–Dec. 25		
North Zone	Oct. 15–Oct. 30 &		
	Nov. 19–Jan. 1		
South Zone	Oct. 22–Nov. 6 &		
	Dec. 17–Jan. 29		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Lake Erie Goose Zone	Oct. 15–Oct. 30 &	2	4
	Nov. 12–Jan. 8	2	4

	Season dates	Limits	
		Bag	Possession
North Zone	Oct. 15–Oct. 30 &	2	4
	Nov. 19–Jan. 1 &	2	4
	Jan. 9–Jan. 22	2	4
South Zone	Oct. 22–Nov. 20 &	2	4
	Dec. 17–Jan. 29	2	4
White-fronted Geese	Same as for Canada geese	2	4
Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	10	20
<i>Tennessee</i>			
Ducks		6	12
Reelfoot Zone	Nov. 12–Nov. 13 &		
	Dec. 3–Jan. 29		
State Zone	Nov. 26–Nov. 27 &		
	Dec. 3–Jan. 29		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Northwest Zone	Dec. 3–Feb. 12	2	4
Southwest Zone	Oct. 8–Oct. 19 &	2	4
	Nov. 26–Nov. 27 &	2	4
	Dec. 3–Jan. 29	2	4
Kentucky/Barkley Lakes Zone	Same as Southwest Zone	2	4
Rest of State	Same as Southwest Zone	2	4
White-fronted Geese	Dec. 3–Feb. 12	2	4
Brant	Nov. 23–Jan. 31	2	4
Light Geese	Nov. 25–Mar. 10	20	
<i>Wisconsin</i>			
Ducks (2)		6	12
North Zone	Sept. 24–Nov. 22		
South Zone	Oct. 1–Oct. 9 &		
	Oct. 15–Dec. 4		
Mississippi River Zone	Sept. 24–Oct. 2 &		
	Oct. 15–Dec. 4		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Horicon Zone	Sept. 16–Dec. 16	Tag System—See State Regulations	
Exterior Zone:			
North Portion:			
Brown Co. Subzone—North	Sept. 16–Dec. 9	2	4
Remainder of North Portion	Sept. 16–Dec. 9	2	4
South Portion:			
Brown Co. Subzone—South	Sept. 16–Oct. 9 &	2	4
	Oct. 15–Dec. 14	2	4
Mississippi River Subzone	Sept. 24–Oct. 2 &	2	4
	Oct. 15–Dec. 29	2	4
Remainder of South Portion	Same as Brown Co. Subzone—South	2	4
White-fronted Geese:			
Horicon Zone	Sept. 20–Dec. 16	1	2
Exterior Zones	Same as for Canada geese	1	2
Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	10	20

(1) In Louisiana, during the Canada goose season, the daily bag limit is 2 dark geese (whitefronts and Canada geese) with no more than 1 Canada goose. Possession limits are twice the daily bag limits.

(2) In Michigan, Ohio, and Wisconsin, the daily bag limit may include no more than one hen mallard.

(3) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

CENTRAL FLYWAY

Flyway-Wide Restrictions

Duck Limits: The daily bag limit is 6 ducks, which may include no more than 5 mallards (2 female mallards), 1 mottled duck, 2 pintails, 1 canvasback,

2 redheads, 2 scaup, and 3 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession and may include no more than 2 hooded mergansers daily and 4 in possession. In

states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 daily and 4 in possession may be hooded mergansers.

	Season dates	Limits	
		Bag	Possession
Colorado			
Ducks		6	12
Southeast Zone	Oct. 26-Jan. 29		
Northeast Zone:	Oct. 8-Dec. 4 & Dec. 23-Jan. 29		
Mountain/Foothills Zone:	Oct. 1-Nov. 27 & Dec. 23-Jan. 29		
Coots	Same as for Ducks	15	30
Mergansers	Same as for Ducks	5	10
Dark Geese:			
Northern Front Range Unit	Oct. 1-Oct. 15 & Nov. 19-Feb. 12	4 4	8 8
South Park/San Luis Valley Unit	Same as N. Front Range Unit	4	8
North Park Unit	Same as N. Front Range Unit	4	8
Rest of State in Central Flyway	Nov. 19-Feb. 12	4	8
Light Geese:			
Northern Front Range Unit	Oct. 29-Feb. 12	20	
South Park/San Luis Valley Unit	Same as N. Front Range Unit	20	
North Park Unit	Same as N. Front Range Unit	20	
Rest of State in Central Flyway	Same as N. Front Range Unit	20	
Kansas			
Ducks		6	12
High Plains	Oct. 8-Jan. 2 & Jan. 21-Jan. 29		
Low Plains:			
Early Zone	Oct. 8-Dec. 4 & Dec. 17-Jan. 1		
Late Zone	Oct. 29-Jan. 1 & Jan. 21-Jan. 29		
Southeast Zone	Nov. 5-Jan. 8 & Jan. 21-Jan. 29		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese and Brant	Oct. 29-Nov. 6 & Nov. 9-Feb. 12	3 3	6 6
White-fronted Geese	Oct. 29-Jan. 1 & Feb. 4-Feb. 12	2 2	4 4
Light Geese	Oct. 29-Nov. 6 & Nov. 9-Feb. 12	20 20	
Montana			
Ducks and Mergansers:		6	12
Zone 1	Oct. 1-Jan. 5		
Zone 2	Same as for Zone 1		
Coots	Same as for Ducks	15	30
Dark Geese	Oct. 1-Jan. 13	4	8
Light Geese	Oct. 1-Jan. 13	6	12
Nebraska			
Ducks:		6	12
High Plains	Oct. 8-Jan. 11		
Low Plains:			
Zones 1 and 2:	Oct. 15-Oct. 16 & Oct. 22-Jan. 1		
Zones 3 and 4:	Oct. 8-Dec. 18 & Dec. 23-Dec. 24		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Niobrara Unit	Oct. 24-Feb. 5	3	6
East Unit	Oct. 8-Oct. 16 & Oct. 22-Jan. 25	3 3	6 6
North Central Unit	Oct. 8-Jan. 20	3	6
Platte River Unit	Oct. 24-Feb. 5	3	6
Panhandle Unit	Nov. 12-Feb. 5	3	6
White-fronted Geese	Oct. 8-Dec. 18 & Feb. 4-Feb. 5	2 1	4 2
Light Geese	Oct. 8-Jan. 4 & Jan. 21-Feb. 5	20 20	
New Mexico			
Ducks and Mergansers (1):		6	12
North Zone	Oct. 8-Jan. 11		
South Zone	Oct. 26-Jan. 29		
Coots	Same as for Ducks	15	30

	Season dates	Limits	
		Bag	Possession
Dark Geese (2):			
Middle Rio Grande Valley Unit (2)	Dec. 31-Jan. 22	2	2
Rest of State	Oct. 15-Jan. 29	4	8
Light Geese	Oct. 15-Jan. 29	20	80
North Dakota			
Ducks		6	12
High Plains	Sept. 24-Dec. 4 & Dec. 10-Jan. 1		
Remainder of State	Sept. 24-Dec. 4		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese (3):			
Missouri River Zone	Sept. 24-Dec. 30	3	6
Rest of State	Sept. 24-Dec. 22	3	6
White-fronted Geese	Sept. 24-Dec. 4	2	4
Light Geese	Sept. 24-Dec. 30	20	
Oklahoma			
Ducks		6	12
High Plains	Oct. 8-Jan. 4		
Low Plains:			
Zone 1:	Oct. 29-Nov. 27 & Dec. 10-Jan. 22		
Zone 2:	Nov. 5-Nov. 27 & Dec. 10-Jan. 29		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Oct. 29-Nov. 27 & Dec. 10-Feb. 12	3	6
White-fronted Geese	Oct. 29-Nov. 27 & Dec. 10-Feb. 5	1	2
Light Geese	Oct. 29-Nov. 27 & Dec. 10-Feb. 12	20	
South Dakota			
Ducks		6	12
High Plains	Oct. 8-Dec. 20 & Dec. 21-Jan. 12		
Low Plains:			
North Zone	Sept. 24-Dec. 6		
Middle Zone	Same as for North Zone		
South Zone	Oct. 8-Dec. 20		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
White-fronted Geese	Sept. 24-Dec. 18	1	2
Canada Geese:			
Unit 1	Oct. 1-Dec. 18	3	6
Unit 2	Oct. 29-Feb. 10	3	6
Unit 3	Oct. 15-Dec. 18 & Jan. 7-Jan. 15	3	6
Light Geese	Sept. 24-Dec. 18	20	
Texas			
Ducks (4):		6	12
High Plains	Oct. 29-Oct. 30 & Nov. 4-Jan. 29		
Low Plains:			
North Zone	Nov. 5-Nov. 27 & Dec. 10-Jan. 29		
South Zone	Same as North Zone		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese and Brant:			
East Tier:			
South Zone	Nov. 5-Jan. 29	3	6
North Zone	Same as for South Zone	3	6
West Tier (5)	Nov. 5-Feb. 5	5	10
White-fronted Geese:			
East Tier:			
South Zone	Nov. 5-Jan. 15	2	4
North Zone	Same as for South Zone	2	4
West Tier (5)	Same as for Canada geese	1	2
Light Geese:			
East Tier:			
South Zone	Nov. 5-Jan. 29	20	

	Season dates	Limits	
		Bag	Possession
North Zone	Same as for South Zone		
West Tier	Same as for Canada geese		
Wyoming			
Ducks (6)		6	12
Zone C1	Oct. 1–Oct. 16 &		
	Oct. 29–Jan. 17		
Zone C2	Sept. 24–Nov. 27 &		
	Dec. 10–Jan. 10		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Dark Geese:			
Zone C1:			
Goshen/Platte Co. (7)	Oct. 1–Oct. 16 &	2	4
	Nov. 19–Feb. 12	4	8
Rest of Zone C1	Oct. 1–Oct. 16 &	5	10
	Nov. 5–Dec. 4 &	5	10
	Dec. 10–Feb. 6	5	10
Zone C2:			
Big Horn/Fremont Co	Sept. 24–Oct. 18 &	5	10
	Nov. 5–Dec. 4 &	5	10
	Dec. 10–Jan. 28	5	10
Rest of Zone C2	Sept. 24–Nov. 27 &	5	10
	Dec. 10–Jan. 18	5	10
Light Geese	Oct. 1–Dec. 25 &	10	40
	Jan. 28–Feb. 15	10	40

- (1) In *New Mexico*, Mexican-like ducks are included in the aggregate with mallards.
- (2) In *New Mexico*, the season for dark geese is closed in Bernalillo, Sandoval, Sierra, and Valencia Counties. In the Middle Rio Grande Valley Unit, a state permit is required.
- (3) In *North Dakota*, see State regulations for additional shooting hour restrictions.
- (4) In *Texas*, the daily bag limit is 6 ducks, which may include no more than 5 mallards (only 2 of which may be hens), 2 redheads, 2 scaup, 3 wood ducks, 1 canvasback, 2 pintails, and 1 dusky duck (mottled duck, black duck and their hybrids, or Mexican-like duck). The season for dusky ducks is closed the first 5 days of the season in all zones. The possession limit is twice the daily bag limit.
- (5) In *Texas*, in the West Tier the daily bag limit for dark geese is in the aggregate and may include no more than 1 white-fronted goose.
- (6) In *Wyoming*, the daily bag limit may include no more than 1 hen mallard.
- (7) See State regulations for additional restrictions.

PACIFIC FLYWAY
Flyway-Wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including

mergansers) may include no more than 2 female mallards, 2 pintails, 2 redheads, 3 scaup, and 1 canvasback. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

	Season dates	Limits	
		Bag	Possession
Arizona			
Ducks (1):		7	14
North Zone:			
Scaup	Oct. 22–Jan. 15	3	6
Other Ducks	Oct. 7–Jan. 15		
South Zone:			
Scaup	Nov. 5–Jan. 29	3	6
Other Ducks	Oct. 21–Jan. 29		
Coots and moorhens	Same as Other Ducks	25	25
Dark Geese (2):			
North Zone:	Oct. 7–Jan. 15	3	6
South Zone:	Oct. 21–Jan. 29	3	6
Light Geese:			
North Zone:	Oct. 7–Jan. 15	4	8
South Zone:	Oct. 21–Jan. 29	4	8
California			
Ducks:		7	14
Northeastern Zone:			
Scaup	Oct. 8–Jan. 1	3	6
Other Ducks	Oct. 8–Jan. 20		
Colorado River Zone:			
Scaup	Nov. 5–Jan. 29	3	6
Other Ducks	Oct. 21–Jan. 29		
Southern Zone:			
Scaup	Nov. 5–Jan. 29	3	6

	Season dates	Limits	
		Bag	Possession
Other Ducks	Oct. 22-Jan. 29		
Southern San Joaquin Valley Zone:			
Scaup	Nov. 12-Jan. 29	3	6
Other Ducks	Oct. 8-Oct. 30 &		
	Nov. 12-Jan. 29		
Balance-of-State Zone:			
Scaup	Nov. 5-Jan. 29	3	6
Other Ducks	Oct. 22-Jan. 29		
Coots and moorhens	Same as for Other Ducks	25	25
Dark Geese:			
Northeastern Zone	Oct. 8-Jan. 15	6	12
Small Canada Geese (3) .....	.....	6	12
Large Canada Geese (4) .....	.....	2	4
White-fronted Geese .....	.....	6	12
Colorado River Zone	Oct. 21-Jan. 29	3	6
Southern Zone	Oct. 22-Jan. 29	3	6
Balance-of-State Zone .....	.....	8	16
Small Canada geese (3)	Oct. 22-Jan. 29	6	12
Large Canada geese (4)	Oct. 1-Oct. 5	6	12
	Oct. 22-Jan. 29	6	12
White-fronted Geese:			
Sacramento Valley	Oct. 22-Dec. 21	2	4
Rest of Zone	Oct. 22-Jan. 29 &	6	12
	Feb. 18-Feb. 22	6	12
Del Norte & Humboldt Counties:			
Small Canada geese (3)	Nov. 5-Jan. 26 &	6	12
	Feb. 18-Mar. 10	6	12
Large Canada geese (4)	Nov. 5-Jan. 26	1	2
White-fronted Geese	Oct. 22-Jan. 29	6	12
Light Geese:			
Northeastern Zone	Oct. 8-Jan. 15	6	12
Colorado River Zone	Oct. 21-Jan. 29	6	12
Southern Zone:			
Imperial Valley	Nov. 5-Jan. 29 &	6	12
	Feb. 11-Feb. 26	6	12
Rest of Zone	Oct. 22-Jan. 29	6	12
Balance-of-State Zone	Oct. 22-Jan. 29	6	12
Del Norte & Humboldt Counties	Oct. 22-Jan. 29	6	12
Brant:			
North Zone	Nov. 7-Dec. 6	2	4
South Zone	Nov. 12-Dec. 11	2	4
Colorado:			
Ducks .....	.....	7	14
Scaup	Sept. 24-Oct. 10 &	3	6
	Nov. 3-Jan. 10	3	6
Other Ducks	Sept. 24-Oct. 10 &		
	Nov. 3-Jan. 29		
Coots	Same as for Other Ducks	25	25
Dark Geese	Sept. 25-Oct. 2 &	4	8
	Nov. 4-Jan. 30	4	8
Light Geese	Same as for Dark Geese	10	20
Idaho:			
Ducks .....	.....	7	14
Zone 1:			
Scaup	Oct. 22-Jan. 13	3	6
Other Ducks	Oct. 1-Jan. 13		
Zone 2	Same as for Zone 1		
Zone 3:			
Scaup	Nov. 5-Jan. 27	3	6
Other Ducks	Oct. 15-Jan. 27		
Coots	Same as for Other Ducks	25	25
Dark Geese:			
Zone 1	Oct. 1-Jan. 13	4	8
Zone 2	Oct. 15-Jan. 27	4	8
Zone 3	Same as for Zone 1	3	6
Light Geese:			
Zone 1 (5)	Oct. 1-Jan. 13	10	20
Zone 2	Nov. 6-Jan. 27 &	10	20
	Feb. 18-Mar. 10	10	20
Zone 3	Oct. 23-Jan. 13 &	10	20
	Feb. 18-Mar. 10	10	20
Montana:			

	Season dates	Limits	
		Bag	Possession
Ducks		7	14
Scaup	Oct. 1–Dec. 23	3	6
Other Ducks	Oct. 1–Jan. 13		
Coots	Same as for Other Ducks	25	25
Dark Geese (6)	Oct. 1–Jan. 13	4	8
Light Geese	Oct. 1–Jan. 13	6	12
<i>Nevada:</i>			
Ducks		7	14
Northeast Zone:			
Scaup	Sept. 24–Dec. 16	3	6
Other Ducks	Sept. 24–Jan. 6		
Northwest Zone (7):			
Scaup	Nov. 5–Jan. 27	3	6
Other Ducks	Oct. 15–Jan. 27		
South Zone (8):			
Scaup	Nov. 5–Jan. 27	3	6
Other Ducks	Oct. 15–Jan. 27		
Coots and moorhens	Same as for Other Ducks	25	25
<i>Dark Geese:</i>			
Northeast Zone	Sept. 24–Jan. 6	3	6
Northwest Zone	Oct. 15–Jan. 27	3	6
South Zone (8)	Oct. 15–Jan. 27	3	6
<i>Light Geese (9):</i>			
Northeast Zone	Sept. 24–Jan. 6	10	20
Northwest Zone	Oct. 15–Jan. 27	10	20
South Zone (8)	Oct. 15–Jan. 27	10	20
<i>New Mexico:</i>			
Ducks		7	14
Scaup	Nov. 5–Jan. 29	2	4
Other Ducks	Oct. 17–Jan. 29		
Coots	Same as for Other Ducks	12	24
Moorhens and gallinules	Same as for Other Ducks	12	24
<i>Dark Geese:</i>			
North Zone	Sept. 24–Oct. 9 & Oct. 31–Jan. 29	3	6
South Zone	Oct. 15–Jan. 29	2	4
<i>Light Geese:</i>			
North Zone	Same as for Dark Geese	10	20
South Zone	Same as for Dark Geese	10	20
<i>Oregon:</i>			
Ducks		7	14
Zone 1:			
Columbia Basin Unit:			
Scaup	Nov. 5–Jan. 29	3	6
Other Ducks	Oct. 15–Oct. 23 & Oct. 26–Jan. 29		
Rest of Zone 1	Same as Columbia Basin Unit		
Zone 2:			
Scaup	Oct. 8–Nov. 27 & Nov. 30–Jan. 3	3	6
Other Ducks	Oct. 8–Nov. 27 & Nov. 30–Jan. 22	3	6
Coots	Same as for Other Ducks	25	25
<i>Geese:</i>			
Northwest General Goose Zone:			
Dark Geese	Oct. 15–Oct. 23 & Nov. 5–Jan. 29	4	8
Small Canada Geese (3)		4	8
Light Geese	Same as for Dark Geese	3	6
Northwest Special Permit Zone (10):		6	12
Dark Geese	Nov. 5–Nov. 13 & Nov. 26–Jan. 15 & Feb. 4–Mar. 10	4	8
Dusky Canada geese		4	8
Small Canada geese (3)		4	8
Light Geese	Same as for Dark Geese	4	8
Southwest General Zone:			
Dark Geese	Oct. 15–Dec. 2 & Dec. 10–Jan. 29	4	8
Light Geese	Same as for Dark Geese	4	8
		1 per season	
		2	4
		4	8
		4	8
		4	8
		6	12

	Season dates	Limits	
		Bag	Possession
South Coast Zone:			
Dark Geese	Oct. 1–Oct. 30 &	4	8
	Nov. 24–Jan. 15 &	4	8
	Feb. 18–Mar. 10	4	8
Light Geese	Oct. 1–Oct. 30 &	6	12
	Nov. 24–Jan. 15	6	12
Harney and Lake County Zone:			
Dark Geese:	Oct. 8–Nov. 27 &	4	8
	Dec. 12–Jan. 29	4	8
Small Canada geese .....	.....	1	2
White-fronted geese:			
Lake County .....	.....	1	2
Rest of Zone .....	.....	4	8
Light Geese	Same as for Dark Geese	6	12
Malheur County Zone:			
Dark Geese	Oct. 8–Nov. 27 &	4	8
	Dec. 12–Jan. 29	4	8
Light Geese	Oct. 8–Nov. 27 &	10	20
	Dec. 29–Jan. 29 &	10	20
	Feb. 18–Mar. 10	10	20
Klamath County Zone:			
Dark Geese:	Oct. 8–Nov. 27 &	4	8
	Dec. 17–Jan. 17 &	4	8
White-fronted geese (Special season)	Feb. 18–Mar. 10	4	8
Light Geese	Oct. 8–Nov. 27 &	6	12
	Dec. 17–Jan. 17 &	6	12
	Feb. 18–Mar. 10	6	12
Eastern Zone:			
Dark Geese	Oct. 15–Oct. 23 &	4	8
	Oct. 31–Jan. 29	4	8
Light Geese	Same as for Dark Geese	6	12
Tillamook County (10):			
Dark Geese	Dec. 3–Jan. 15 &	4	8
	Jan. 21–Mar. 10	4	8
Small Canada Geese (3) .....	.....	3	6
Light Geese	Same as for Dark Geese	4	8
Brant	Nov. 19–Dec. 4	2	4
Utah: (11)			
Ducks .....	.....	7	14
Zone 1:			
Scaup	Oct. 1–Dec. 24	3	6
Other Ducks	Oct. 1–Jan. 14 .....	.....	.....
Zone 2:			
Coots	Same as for Zone 1 .....	.....	.....
Geese:			
Light:			
North Goose Zone	Oct. 22–Jan. 14 &	10	20
	Feb. 18–Mar. 10	10	20
Rest of State	Oct. 14–Jan. 14 &	10	20
	Mar. 1–Mar. 10	10	20
Dark:			
North Goose Zone	Oct. 1–Jan. 14	3	6
Rest of State	Oct. 1–Oct. 13 &	3	6
	Oct. 29–Jan. 29	3	6
Washington:			
Ducks .....	.....	7	14
East Zone:			
Scaup	Nov. 5–Jan. 29	3	6
Other Ducks	Oct. 15–Oct 19 & .....	.....	.....
	Oct. 22–Jan. 29 .....	.....	.....
West Zone (12)	Same as the East Zone .....	.....	.....
Coots	Same as for Other Ducks	25	25
Geese:			
Management Area 1 (13):			
Light Geese	Oct 15–Jan. 29 .....	.....	.....
Dark Geese	Oct 15–Oct. 27 & .....	.....	.....
	Nov. 5–Jan. 29 .....	.....	.....
Management Area 2A (14):	Nov. 12–Nov. 23 &	4	8
	Nov. 26–Nov. 28 &	4	8
	Dec. 7–Jan. 29	4	8
Dusky Canada geese .....	.....	1 per season	

	Season dates	Limits	
		Bag	Possession
Late-Season Canada Geese:	Feb. 4–Mar. 7	4	8
Dusky Canada geese .....	.....	1 per season	
Management Area 2B (14):	Oct. 15–Oct. 26 &	4	8
	Nov. 5–Jan. 29	4	8
Dusky Canada geese .....	.....	1 per season	
Management Areas 3 (13)	Oct. 15–Oct. 27 &	4	8
	Nov. 5–Jan. 29	4	8
Management Areas 4 & 5 (13)	Oct. 15–Oct. 19 &	4	8
	Oct. 23–Jan. 29	4	8
Brant (15):			
Skagit County	Jan. 14–Jan. 29	2	4
Pacific County	Jan. 7–Jan. 22	2	4
Wyoming:			
Ducks .....	.....	7	14
Snake River Zone:			
Scaup	Sept. 24–Dec. 18	3	6
Other Ducks	Sept. 24–Jan. 6		
Balance of State Zone	Same as Snake River Zone		
Coots	Same as for Other Ducks	25	25
Dark Geese:	Sept. 24–Dec. 29	3	6

- (1) In *Arizona*, the daily limit may include no more than either 2 hen mallards or 2 Mexican-like ducks, or 1 of each; and not more than 4 hen mallards and Mexican-like ducks, in the aggregate, may be in possession.
- (2) In *Arizona*, in Yuma County, La Paz County, Game Management Units 13B, 15, and that portion of Unit 16 lying within Mohave County, the bag and possession limits are 3 and 6 for Canada geese, respectively.
- (3) In *California* and *Oregon*, small Canada geese are Cackling and Aleutian Canada geese.
- (4) In *California*, large Canada geese are Western and Lesser Canada geese.
- (5) In *Idaho*, the season on light geese is closed in Fremont and Teton Counties.
- (6) In *Montana*, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
- (7) In *Nevada*, in Churchill County, the daily bag limit may include no more than 1 wood duck.
- (8) In *Nevada*, in the Moapa Valley portion of the Overton Wildlife Management Area, the open season for all ducks, coots, moorhens, dark geese, and light geese is November 5 to January 27.
- (9) In *Nevada*, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties.
- (10) In *Oregon*, the Northwest Special Permit Zone is closed to all goose hunting, except for designated areas. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
- (11) In *Utah*, the shooting hours are 7:30 a.m. to sunset on October 1 in Cache, Salt Lake, Davis, Weber, and Box Elder Counties.
- (12) In *Washington*, the daily bag limit in the West Zone may include no more than 2 scoters, 2 long-tailed ducks, and 2 goldeneyes, with the possession limit twice the daily bag limit. The daily bag and possession limit, and the season limit, for harlequins is 1.
- (13) In *Washington*, in State Goose Area 4, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Areas 1, 3, and 5, hunting is everyday. See State regulations for details, including shooting hours.
- (14) In *Washington*, see State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
- (15) In *Washington*, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) *Youth Waterfowl Hunting Days.*
 The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

Definition
 Youth Hunters: Includes youths 15 years of age or younger.
Note: The following seasons are in addition to the seasons published previously in the September 1, 2011, *Federal Register* (76 FR 54658). Bag and possession limits will conform to those set for the regular season.

	Season dates
ATLANTIC FLYWAY	
<i>Connecticut</i>	Ducks, geese, mergansers, and coots
	Oct. 1 & Nov. 5.
<i>Florida</i>	Ducks, mergansers, coots, moorhens, and geese
	Feb. 4 & 5.
<i>Maryland</i>	Ducks, coots, snow geese, Canada geese, sea ducks, and brant
<i>Massachusetts</i>	Ducks, mergansers, coots, and geese
<i>New Jersey</i>	Ducks, geese, mergansers, coots, moorhens, and gallinules
North Zone	Oct. 1 & Nov. 5.
South Zone	Nov. 11 & 12.
Coastal Zone	Oct. 22 & 29.
<i>North Carolina</i>	Ducks, mergansers, Canada geese (9), tundra swans (10), and coots
	Dec. 10 & Feb. 4.
<i>South Carolina</i>	Ducks, geese, mergansers, and coots
	Feb. 4 & 5.

Season dates

Virginia Ducks, mergansers, coots, moorhens, gallinules, tundra swans (10), and Canada geese (11). Oct. 22 & Feb. 4.

MISSISSIPPI FLYWAY

Arkansas Ducks, geese, mergansers, coots, moorhens, and gallinules Feb. 4 & 5.
 Illinois Ducks, geese, mergansers, and coots
 North Zone Oct. 8 & 9.
 Central Zone Oct. 15 & 16.
 South Central Zone Nov. 5 & 6.
 South Zone Nov. 12 & 13
 Indiana Ducks, mergansers, coots, moorhens, gallinules, and geese:
 North Zone Oct. 8 & 9.
 South Zone Oct. 15 & 16.
 Ohio River Zone Oct. 22 & 23.
 Iowa Ducks, Canada geese, light geese, mergansers, coots
 North Zone Oct. 1 & 2.
 South Zone Oct. 8 & 9.
 Kentucky Ducks, geese, mergansers, coots, moorhens, and gallinules:
 West Zone Feb. 4 & 5.
 East Zone Nov. 5 & 6.
 Louisiana Ducks, mergansers, coots, moorhens, gallinules, and geese:
 West Zone Nov. 5 & 6.
 East Zone Nov. 12 & 13.
 Mississippi Ducks, mergansers, coots, moorhens, gallinules, and geese Feb. 4 & 5.
 Missouri Ducks, coots, mergansers, moorhens, gallinules, and geese:
 North Zone Oct. 22 & 23.
 Middle Zone Oct. 22 & 23.
 South Zone Nov. 19 & 20.
 Ohio Ducks, mergansers, coots, moorhens, gallinules, and geese Oct. 1 & 2.
 Tennessee Ducks, mergansers, coots, moorhens, gallinules, and geese:
 Reelfoot Zone Feb. 11 & 12.
 Remainder of State Feb. 4 & 5.

CENTRAL FLYWAY

Kansas (5) Ducks, dark geese, light geese, mergansers and coots:
 High Plains Oct. 1 & 2.
 Low Plains:
 Early Zone Oct. 1 & 2.
 Late Zone Oct. 22 & 23.
 Southeast Zone Oct. 22 & 23.
 Oklahoma Ducks, mergansers, coots, and geese:
 High Plains Oct. 1 & 2.
 Low Plains:
 Zone 1 Oct. 15 & 16.
 Zone 2 Oct. 29 & 30
 Texas Ducks, geese, mergansers, moorhens, gallinules, and coots:
 High Plains Oct. 22 & 23.
 Low Plains:
 North Zone Oct. 29 & 30.
 South Zone Oct. 29 & 30.

PACIFIC FLYWAY

Arizona Ducks, geese, brant, mergansers, coots, moorhens, and gallinules
 North Zone Oct. 1 & 2.
 South Zone Feb. 4 & 5.
 California Ducks, geese, brant, mergansers, coots, moorhens, and gallinules
 Northeastern Zone Sept. 24 & 25.
 Colorado River Zone Feb. 4 & 5.
 Southern Zone Feb. 4 & 5.

		Season dates
Southern San Joaquin Valley		Feb. 4 & 5.
Balance-of-State Zone		Feb. 4 & 5.
* * * * *		
Nevada	Ducks, geese, mergansers, coots, moorhens, and gallinules	
Northeast Zone		Sept. 17 & Jan 14.
Northwest Zone		Oct. 1 & Feb. 4.
South Zone		Oct. 22 & Feb. 4.
* * * * *		

(1) In Maryland, the daily bag limit may include no more than 2 Canada geese and 2 brant.

(5) In Kansas, the nonresident youth, must be licensed and possess state and federal duck stamps as required by state or federal regulation to hunt waterfowl.

(9) In North Carolina, the daily bag limit in the Northeast Hunt Zone may not include dark geese except by permit.

(10) In North Carolina and Virginia, the daily bag limit may not include tundra swans except by permit.

(11) In Virginia, the daily bag limit for Canada geese is 2.

■ 4. Section 20.106 is amended by adding the entries for the following States in alphabetical order to read as follows:

§ 20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 30, 2011, Federal Register (76 FR 54052).

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take sandhill cranes at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting

season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Note: The following seasons are in addition to the seasons published previously in the September 1, 2011, Federal Register (76 FR 54658).

	Season dates	Bag	Limits	
				Possession
MISSISSIPPI FLYWAY				
Kentucky (1)(6)	Dec. 17–Jan. 15	2		2
* * * * *				
CENTRAL FLYWAY				
Oklahoma (1)	Oct. 22–Jan. 22	3		6
* * * * *				
Texas (1):				
Zone A	Nov. 5–Feb. 5	3		6
Zone B	Nov. 25–Feb. 5	3		6
Zone C	Dec. 24–Jan. 29	2		4
* * * * *				

(1) Each person participating in the regular sandhill crane seasons must have a valid Federal or State-issued sandhill crane hunting permit in their possession while hunting. However, in those States where the State-issued Harvest Information Survey Program (HIP) certification for game bird hunting also identifies the hunter as a sandhill crane hunter, the separate sandhill crane permit identified above is not required.

(6) In Kentucky, the season limit is 2 cranes. If the harvest objective of 400 cranes is obtained before the season ending date, the season will close.

■ 5. Section 20.107 is revised to read as follows:

§ 20.107 Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open

seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State

regulations. Hunting is by State permit only.

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take

sandhill cranes at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its

provisions and must be presented to any law enforcement officer upon request. The permit is not transferable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If

the permit is altered or defaced in any way, the permit becomes invalid.

Note: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season dates	Limits
ATLANTIC FLYWAY		
North Carolina	Nov. 12–Jan. 31	1 tundra swan per season.
Virginia	Dec. 1–Jan. 31	1 tundra swan per season.
CENTRAL FLYWAY (1)		
Montana	Oct. 1–Jan. 5	1 tundra swan per season.
North Dakota	Oct. 1–Jan. 1	1 tundra swan per season.
South Dakota	Oct. 1–Dec. 18	1 tundra swan per permit.
PACIFIC FLYWAY (1)(2)		
Montana (3)	Oct. 15–Dec. 1	1 swan per season.
Nevada (4)(5)	Oct. 15–Jan. 8	2 swans per season.
Utah (5)(6)	Oct. 1–Dec. 11	1 swan per season.

- (1) See State regulations for description of area open to swan hunting.
- (2) Any species of swan may be taken.
- (3) In *Montana*, all harvested swans must be reported by way of a bill measurement card within 3 days of harvest.
- (4) All harvested swans and tags must be checked or registered within 5 days of harvest.
- (5) Harvests of trumpeter swans are limited to 5 in Nevada and 10 in Utah. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
- (6) In *Utah*, all harvested swans and tags must be checked or registered within 3 days of harvest.

■ 6. Section 20.109 is amended by adding the entries for the following States in alphabetical order to read as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations.

Area descriptions were published in the August 25, 2011 (76 FR 53536) and August 30, 2011 (76 FR 54052) **Federal Registers**.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is twice the daily bag limit. These limits apply to falconry during both regular hunting seasons and extended falconry seasons—unless further restricted by State regulations.

The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

Note: The following seasons are in addition to the seasons published previously in the September 1, 2011, **Federal Register** (76 FR 54658).

	Extended falconry dates
ATLANTIC FLYWAY	
<i>Delaware</i>	
Ducks, mergansers, and coots	Jan. 30–Mar. 2.
Brant	Jan. 30–Mar. 2.
<i>Florida</i>	
Ducks, mergansers, light geese, and coots	Oct. 30–Nov. 12 & Feb. 6–Mar. 2.
<i>Georgia</i>	
Ducks, mergansers, gallinules, coots, and sea ducks	Nov. 28–Dec. 9 & Jan. 30–Feb. 10.
<i>Maine</i>	
Ducks, mergansers, and coots (4):	
North Zone	Dec. 10–Feb. 1.
South Zone	Jan. 7–Feb. 28.
<i>Maryland</i>	
Ducks	Feb. 8–Mar. 10.
Brant	Jan. 29–Mar. 10.
Light Geese	Feb. 16–Mar. 10.
<i>Massachusetts</i>	
Ducks, mergansers, sea ducks, and coots	Feb. 2–Feb. 9.

Extended falconry dates

New Hampshire

Ducks, mergansers, and coots:

- Inland Zone Nov. 7–Nov. 22 & Dec. 19–Jan. 16.
- Coastal Zone Jan. 26–Mar. 10.

New Jersey

Woodcock:

- North Zone Oct. 1–Oct. 14 & Nov. 20–Jan. 15.
- South Zone Oct. 1–Nov. 11 & Dec. 4–Dec. 16 & Dec. 31–Jan. 15.

Ducks, mergansers, coots, and brant:

- North Zone Jan. 1–Feb. 7.
- South Zone Jan. 8–Feb. 14.
- Coastal Zone Jan. 25–Feb. 28.

New York

Ducks, mergansers and coots:

- Long Island Zone Nov. 1–Nov. 23 & Nov. 28–Dec. 4 & Jan. 30–Feb. 13.
- Northeastern Zone Oct. 11–Oct. 21 & Dec. 11–Jan. 13.
- Southeastern Zone Oct. 1–Oct. 7 & Oct. 17–Nov. 4 & Dec. 26–Jan. 13.
- Western Zone Oct. 1–Oct. 21 & Dec. 6–Dec. 25 & Jan. 10–Jan. 13.

North Carolina

Ducks, mergansers and coots

Oct. 24–Nov. 5 & Jan. 30–Feb. 18.

Pennsylvania

Ducks, mergansers, and coots:

- North Zone Oct. 24–Nov. 10 & Jan. 5–Jan. 14 & Feb. 23–Mar. 10.
- South Zone Oct. 24–Nov. 14 & Feb. 17–Mar. 10.
- Northwest Zone Dec. 17–Jan. 14 & Feb. 24–Mar. 10.
- Lake Erie Zone Jan. 26–Mar. 10.

Canada Geese:

- SJBP Zone Feb. 28–Mar. 10.
- AP Zone Feb. 3–Mar. 10.
- RP Zone Mar. 9–Mar. 10.

South Carolina

Ducks, mergansers, and coots

Nov. 1–Nov. 18 & Nov. 27–Dec. 2 & Jan. 30–Feb. 3.

Virginia

Moorhens and gallinules

Dec. 5–Dec. 9 & Jan. 30–Feb. 29.

Ducks, mergansers, and coots

Dec. 5–Dec. 9 & Jan. 30–Feb. 29.

Canada Geese:

- Eastern (AP) Zone Dec. 10–Dec. 22 & Jan. 30–Feb. 29.
- Western (SJBP) Zone Dec. 10–Dec. 14 & Feb. 16–Feb. 29.

Brant

Oct. 6–Nov. 18 & Nov. 28–Dec. 9 & Jan. 30–Feb. 4.

MISSISSIPPI FLYWAY

Arkansas

Ducks, mergansers, and coots

Feb. 1–Feb. 15.

Illinois

Ducks, mergansers, and coots

Feb. 12–Mar. 10.

Indiana

Ducks, mergansers, and coots:

- North Zone Sept. 27–Sept. 30 & Feb. 14–Mar. 10.
- South Zone Oct. 15–Oct. 21 & Feb. 17–Mar. 10.
- Ohio River Zone Oct. 22–Oct. 28 & Feb. 17–Mar. 10.

Iowa

Ducks, mergansers, and coots:

- North Zone Dec. 15–Jan. 28.
- South Zone Dec. 16–Jan. 29.

White-fronted Geese:

- North Goose Zone Dec. 7–Jan. 8.
- South Goose Zone Dec. 14–Jan. 13.

Kentucky

Extended falconry dates

Ducks, mergansers, and coots	Nov. 5–Nov. 23 & Nov. 28–Dec. 4 & Jan. 30–Jan. 31.
Geese	Nov. 5–Nov. 22.
<i>Louisiana</i>	
* * * * *	
Rails and moorhens	Nov. 5–Nov. 11 & Jan. 5–Feb. 3.
Ducks:	
West Zone	Nov. 5–Nov. 11 & Dec. 5–Dec. 16 & Jan. 23–Feb. 3.
East Zone	Nov. 5–Nov. 18 & Nov. 28–Dec. 9 & Jan. 30–Feb. 3.
<i>Michigan</i>	
Ducks, mergansers, coots, and moorhens	Dec. 12–Jan. 15 & Mar. 1–Mar. 10.
<i>Minnesota</i>	
* * * * *	
Ducks, mergansers, coots, moorhens, and gallinules	Sept. 26–Sept. 30 & Nov. 23–Jan. 7.
<i>Mississippi</i>	
Mourning Doves	Nov. 19–Nov. 27 & Jan. 16–Feb. 10.
Ducks, mergansers and coots	Feb. 10–Mar. 10.
<i>Missouri</i>	
* * * * *	
Ducks, mergansers, and coots	Sept. 10–Sept. 25 & Feb. 11–Mar. 10.
<i>Ohio</i>	
Ducks and coots	Sept. 1–Sept. 18 & Feb. 4–Mar. 3.
Geese	Sept. 1–Sept. 18 & Feb. 4–Feb. 18.
<i>Tennessee</i>	
* * * * *	
Ducks, mergansers, and coots	Sept. 15–Oct. 21.
<i>Wisconsin</i>	
Rails, snipe, moorhens, and gallinules:	
North Duck Zone	Sept. 1–Sept. 23 & Nov. 23–Dec. 16.
South Duck Zone	Sept. 1–Sept. 30 & Oct. 10–Oct. 14 & Dec. 5–Dec. 16.
Mississippi River Zone	Sept. 1–Sept. 23 & Oct. 3–Oct. 14 & Dec. 5–Dec. 16.
Woodcock	Sept. 1–Sept. 23 & Nov. 8–Dec. 16.
Ducks, mergansers, and coots	Sept. 17–Sept. 18 & Jan. 6–Feb. 19.
CENTRAL FLYWAY	
<i>Kansas</i>	
Ducks, mergansers, and coots:	
Low Plains	Feb. 25–Mar. 10.
* * * * *	
<i>Oklahoma</i>	
Ducks, mergansers, and coots:	
Low Plains	Feb. 13–Feb. 27.
<i>South Dakota</i>	
Ducks, mergansers, and coots:	
High Plains	Sept. 3–Sept. 10.
Low Plains:	
North Zone	Sept. 3–Sept. 16 & Sept. 19–Sept. 23 & Dec. 7–Dec. 18.
Middle Zone	Same as North Zone
South Zone	Sept. 3–Sept. 16 & Sept. 19–Oct. 5.
<i>Texas</i>	
* * * * *	
Ducks, mergansers, and coots:	
Low Plains	Jan. 30–Feb. 13.
<i>Wyoming</i>	
* * * * *	
Ducks, mergansers, and coots	
Zone C1	Sept. 24–Sept. 25 & Oct. 17–Oct. 24.
Zone C2	Sept. 17–Sept. 18 & Nov. 28–Dec. 5.
PACIFIC FLYWAY	
<i>Arizona</i>	
* * * * *	
Ducks and mergansers:	

	Extended falconry dates
North Zone	Oct. 3–Oct. 6.
South Zone	Jan. 30–Feb. 2.
<i>California</i>	
Ducks, mergansers, and coots:	
Colorado River Zone	Jan. 30–Feb. 2.
Southern Zone	Jan. 30–Feb. 3.
Southern San Joaquin Zone	Jan. 30–Feb. 1.
Canada Geese and White-fronted Geese:	
Northeastern Zone	Jan. 16–Jan. 18.
Southern Zone (5)	Same as for Ducks.
Balance-of-State Zone (6)	Same as for Ducks.
Brant:	
Northern Zone	Oct. 22–Nov. 6 & Dec. 7–Feb. 3.
Southern Zone	Oct. 22–Nov. 11 & Dec. 12–Feb. 3.
Light Geese:	
Northeastern Zone	Jan. 16–Jan. 18.
Southern Zone (5)	Same as for Ducks.
Balance-of-State Zone (6)	Same as for Ducks.
<i>New Mexico</i>	
* * * * *	
Rails	Nov. 26–Jan. 1.
<i>Utah</i>	
* * * * *	
Ducks, mergansers, coots, geese, and snipe:	
Statewide	Sept. 17 only.

(2) In *Montana*, the bag limit is 2 and the possession limit is 6.

(4) In *Maine*, the daily bag and possession limits for black ducks are 1 and 2, respectively.

(5) In *California*, the falconry season for geese is concurrent with the regular season for white geese in the Imperial County special management area.

(6) In *California*, the falconry season for geese is concurrent with the regular season for small Canada geese in Del Norte and Humboldt counties.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–R9–MB–2011–0014;
91200–1231–9BPP–L2]

RI1018–AX34

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2011–12 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows

the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 24, 2011.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA, or at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what

means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 8, 2011, **Federal Register** (76 FR 48694), we proposed special migratory bird hunting regulations for the 2011–12 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of

usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the April 8, 2011, **Federal Register** (76 FR 19876), we requested that tribes desiring special hunting regulations in the 2011–12 hunting season submit a proposal including details on:

- (1) Harvest anticipated under the requested regulations;
- (2) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);
- (3) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and
- (4) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the August 8 proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the September 1, 2011, **Federal Register** (76 FR 54676). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl. All the regulations contained in this final rule were either submitted by the tribes or approved by the tribes and follow our proposals in the August 8 proposed rule.

Status of Populations

In the August 8 proposed rule and September 1 final rule, we reviewed the status for various populations for which seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey; population status reports for blue-winged teal, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons; and the status and harvest of waterfowl. The

tribal seasons established below are commensurate with the population status. For more detailed information on methodologies and results, complete copies of the various reports are available at the street address indicated under **ADDRESSES** or from our *Web site* at <http://www.fws.gov/migratorybirds/NewsPublicationsReports.html>.

Comments and Issues Concerning Tribal Proposals

For the 2011–12 migratory bird hunting season, we proposed regulations for 30 tribes or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 10 tribes have proposals with late seasons. We also noted in the August 8 proposed rule (76 FR 19876) that we were proposing seasons for five Tribes that we usually hear from but from which we had not yet received proposals. We subsequently did not receive proposals from these five Tribes and have not included them in this final rule.

The comment period for the August 8 proposed rule closed on August 18, 2011. We did not receive any comments on our April 8, 2011, proposed rule, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. We received one comment on our August 8 proposed rule, which we responded to in our September 1, 2011, final rule (76 FR 54676).

National Environmental Policy Act (NEPA) Consideration

NEPA considerations are covered by the programmatic document “Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSSES 88–14),” filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled “Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands” is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to

develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available either by writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing our *Web site* at <http://www.fws.gov/migratorybirds>.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, “The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act” (and) shall “insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *.”

Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies’ actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season.

For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of \$205–\$270 million. We also chose alternative 3 for the 2009–10 and the 2010–11 seasons. In the April 8 proposed rule, we proposed no changes to the season frameworks for the 2011–12 season, and as such, we again considered these three alternatives. Population status information discussed in the August 26 proposed rule supported selection of alternative 3 for the 2011–12 season. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov> at Docket No. FWS–R9–MB–2011–0014.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was

based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately \$1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see ADDRESSES) or from our Web site at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov> at Docket No. FWS–R9–MB–2011–0014.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of \$100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 4/30/2014). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013). A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking would not impose a cost of \$100 million

or more in any given year on local or State government or private entities. Therefore, this rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 8 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2011–12 migratory bird hunting season. The resulting proposals were contained in a separate August 8, 2011, proposed rule (76 FR 48694). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States and Tribes would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We, therefore, find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these seasons will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulations Promulgation

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

- 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

- 2. Amend § 20.110 by revising paragraphs (a), (b), (f) through (h), (l), (o), (s), (z), and (aa), to read as set forth below. (Current § 20.110 was published at 75 FR 53774, September 1, 2010, and amended at 75 FR 59042, September 24, 2010, and 76 FR 54676, September 1, 2011.)

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) *Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters).*

Doves

Season Dates: Open September 1 through September 15, 2011; then open November 12 through December 26, 2011.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits after the first day of the season.

Ducks (Including Mergansers)

Season Dates: Open October 8, 2011, through January 22, 2012.

Daily Bag and Possession Limits: Seven ducks, including two hen mallards, two redheads, two Mexican ducks, two goldeneye, two cinnamon teal, three scaup, one canvasback, and one pintail. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate.

Geese

Season Dates: Open October 15, 2011, through January 22, 2012.

Daily Bag and Possession Limits: Three geese, including no more than three dark (Canada) geese and three white (snow, blue, Ross's) geese. The possession limit is six dark geese and six white geese.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona. The early season will be open from one-half hour before sunrise until noon. For the late season, shooting hours are from one-half hour before sunrise to sunset.

(b) *Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters).*

Tribal Members Only**Ducks (Including Mergansers)**

Season Dates: Open September 1, 2011, through March 9, 2012.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.
Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.
Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters**Ducks (Including Mergansers)**

Scaup Season Dates: Open October 1 through December 25, 2011.

Season Dates: Open October 1, 2011, through January 13, 2012.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, three scaup (when open), one canvasback, and two redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: The daily bag and possession limit is 25.

Geese

Dark Geese

Season Dates: Open October 1, 2011, through January 13, 2012.

Daily Bag and Possession Limits: Four and eight geese, respectively.

Light Geese

Season Dates: Open October 1, 2011, through January 13, 2012.

Daily Bag and Possession Limits: 10 and 20 geese, respectively.

Youth Waterfowl Hunt

Season Dates: September 24–25, 2011.

Daily Bag and Possession Limits: Same as ducks.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

* * * * *

(f) *Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters).*

Ducks (Including Mergansers)

Season Dates: Open October 8 through November 30, 2011.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, two pintail, two redheads, one canvasback, and three scaup. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 8 through November 30, 2011.

Daily Bag and Possession Limits: Two and four, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(g) *Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).*

Nontribal Hunters on Reservation

Ducks

Scaup Season Dates: Open October 1 through December 25, 2011.

Regular Duck Season Dates: Open October 1, 2011, through January 30, 2012. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays, and for a continuous period in the months of October and November, not to exceed 107 days total. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: Seven ducks, including no more than two female mallards, two pintail, one canvasback, three scaup (when open), and two redheads. The possession limit is twice the daily bag limit.

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 2 through September 16, 2011, for the early season, and open October 1, 2011, through January 31, 2012, for the late season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant (when the State's season is open) and is in addition to dark goose limits for the late season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2011, through January 31, 2012.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2011, through January 31, 2012.

Daily Bag Limit: 6 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General Conditions: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(h) *Klamath Tribe, Chiloquin, Oregon (Tribal Members Only).*

Ducks

Season Dates: Open October 1, 2011, through January 31, 2012.

Daily Bag and Possession Limits: 9 and 18 ducks, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 9 and 18 geese, respectively.

General Conditions: The Klamath Tribe provides its game management officers, biologists, and wildlife technicians with regulatory enforcement authority, and has a court system with judges that hear cases and set fines. Nontoxic shot is required. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

* * * * *

(l) *Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).*

Tribal Members

Ducks, Mergansers, and Coots

Season Dates: Open September 24, 2011, through March 10, 2012.

Daily Bag and Possession Limits: Six ducks, including no more than one hen mallard, two scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 24, 2011, through March 10, 2012.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open September 24, 2011, through March 10, 2012.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open September 24, 2011, through March 10, 2012.

Daily Bag and Possession Limits: 20 and 40, respectively.

Nontribal Hunters

Ducks (Including Mergansers and Coots)

Season Dates: Open September 27, 2011, through January 1, 2012.

Daily Bag and Possession Limits: Six ducks, including no more than one hen

mallard, two scaup, one mottled duck, one canvasback, two redheads, two wood ducks, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 29, 2011, through February 12, 2012.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open October 29, 2011, through January 6, 2012, and open January 28 through February 12, 2012.

Daily Bag and Possession Limits: One and two, respectively.

Light Geese

Season Dates: Open October 29, 2011, through January 12, 2012, and open February 4 through March 10, 2012.

Daily Bag and Possession Limits: 20 and 40, respectively.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot.

Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

* * * * *

(o) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).

Band-Tailed Pigeons

Season Dates: Open September 1 through 30, 2011.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1 through 30, 2011.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers and Coots)

Scaup Season Dates: Open September 24 through December 18, 2011.

Season Dates: Open September 24, 2011, through January 8, 2012.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, three scaup (when open), one mottled duck, one canvasback, two redheads, and two pintail. Coot daily bag limit is 25. Merganser daily bag limit is seven. The

possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 24, 2011, through January 8, 2012.

Daily Bag and Possession Limits: Four and eight, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

* * * * *

(s) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters).

Ducks and Mergansers

Scaup Season Dates: Open October 22, 2011, through January 13, 2012.

Season Dates: Open October 1, 2011, through January 13, 2012.

Daily Bag and Possession Limits: Seven ducks and mergansers, including no more than two hen mallards, two pintail, three scaup (when open), one canvasback, and two redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots. The possession limit is twice the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Dark Geese

Season Dates: Open October 1, 2011, through January 13, 2012.

Daily Bag and Possession Limits: Four and eight, respectively.

Brant

Season Dates: Open October 1, 2011, through January 13, 2012.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 1, 2011, through January 13, 2012.

Daily Bag and Possession Limits: 10 and 20, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal

migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

* * * * *

(z) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).

Ducks

Season Dates: Open October 1, 2011, through February 28, 2012.

Daily Bag and Possession Limits: 15 and 20, respectively.

Coots

Season Dates: Open October 15, 2011, through February 15, 2012.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open October 15, 2011, through February 28, 2012.

Daily Bag and Possession Limits: Seven and ten geese, respectively.

Brant

Season Dates: Open November 1 through 10, 2011.

Daily Bag and Possession Limits: Two and two, respectively.

Mourning Dove

Season Dates: Open September 1 through December 31, 2011.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

General Conditions: Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(aa) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only).

Teal

Season Dates: Open October 13, 2011, through February 25, 2012.

Daily Bag Limits: Ten teal.

Ducks

Season Dates: Open October 15 through 23, 2011, and open November 1, 2011, through February 28, 2012.

Daily Bag Limits: Six ducks, including no more than four hen mallards, four

black ducks, four mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, three wood ducks, one canvasback, two redheads, and one pintail. The season is closed for harlequin ducks.

Sea Ducks

Season Dates: Open October 8, 2011, through February 25, 2012.

Daily Bag Limits: Seven ducks including no more than four of any one species (only one of which may be a hen eider).

Woodcock

Season Dates: Open October 13 through November 26, 2011.

Daily Bag Limits: Three woodcock.

Canada Geese

Season Dates: Open September 7 through 24, 2011, and open October 31, 2011, through February 25, 2012.

Daily Bag Limits: Eight Canada geese.

Snow Geese

Season Dates: Open September 7 through 24, 2011, and open November 25, 2011, through February 25, 2012.

Daily Bag Limits: 15 snow geese.

Sora and Virginia Rails

Season Dates: Open September 1 through November 9, 2011.

Daily Bag Limits: 5 sora and 10 Virginia rails.

Snipe

Season Dates: Open September 1 through December 16, 2011.

Daily Bag Limits: Eight snipe.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

* * * * *

Dated: September 20, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011-24668 Filed 9-22-11; 4:15 pm]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

[Docket No. FWS-R9-NSR-2011-0038; 93270-1265-0000-4A]

RIN 1018-AX54

2011-2012 Refuge-Specific Hunting and Sport Fishing Regulations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the Fish and Wildlife Service, published a final rule in the *Federal Register* on September 9, 2011, revising our regulations concerning hunting and sport fishing programs at national wildlife refuges. Inadvertently we made some errors in our amendatory instructions. With this technical correction, we correct those errors.

DATES: Effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Leslie Marler (703) 358-2397.

SUPPLEMENTARY INFORMATION: We published a final rule in the *Federal Register* on September 9, 2011 (76 FR 56054), to finalize our yearly updates to the Code of Federal Regulations (CFR) at 50 CFR part 32 concerning hunting and sport fishing programs at national wildlife refuges. The final rule added refuges to the list of areas open for hunting and/or sport fishing programs, and increased the activities available at other refuges. We also developed pertinent refuge-specific regulations for those activities, and amended certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2011-2012 season. Inadvertently, this final rule contained errors. This document corrects the final regulations by revising 50 CFR part 32.

This document corrects instructions given at amendatory instruction 30f. for Trinity River National Wildlife Refuge in the State of Texas, which printed at page 56086. Amendment 30f. reads, in part: “* * * redesignate * * * C.2 and C.3 as paragraphs C.3 and C.4.* * *” However, this is an error, because a paragraph “C.4” currently exists in the “Trinity River National Wildlife Refuge” regulations, and that paragraph should have been removed.

PART 32—[AMENDED]

Accordingly, in FR Doc. 2011-22752 appearing on page 56064 in the *Federal Register* of Friday, September 9, 2011, the following correction is made:

§ 32.63 [Amended]

■ On page 56086, in the second column, amendment 30.f amending § 32.63 is corrected to read, “Revising paragraphs B.1., B.2., and B.4. through B.8, adding paragraph B.9., and revising paragraph C.1., redesignating paragraphs C.2. and C.3. as paragraphs C.3. and C.4., adding new paragraph C.2., and removing paragraphs C.4. through C.6. under Trinity River National Wildlife Refuge.”

Dated: September 20, 2011.

Sara Prigan,

Federal Register Liaison.

[FR Doc. 2011-24498 Filed 9-23-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 600

[Docket No. 110810490-1504-01]

RIN 0648-BB25

Technical Amendment; Updates to Titles of Officials, Office Names, and References

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: This rule provides multiple administrative updates, which pertain to international fisheries and domestic fisheries. Other updates in office names and a fax number are also included.

DATES: Effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT: MiAe Kim, Trade and Marine Stewardship Division, Office of International Affairs, NMFS (ph. 301-427-8365, fax 301-713-2313, or e-mail mi.ae.kim@noaa.gov).

SUPPLEMENTARY INFORMATION: NMFS is amending its definitions in 50 CFR part 300 to update titles of officials, office names, and addresses to be consistent with the same in part 600. The definition of “Regional Administrator” is removed from § 300.11 because of the revision to the definitions in § 300.2. The definition of “lobster” is also revised in § 300.121 to clarify that *Panulirus argus* can be referred to as “Caribbean spiny lobster” as well as “spiny lobster.” This rule updates reference to the Magnuson-Stevens Fishery Conservation and Management Act from “Magnuson Act” to “Magnuson-Stevens Act.”

Furthermore, the responsibilities for processing and tracking of Russian fishing permits for U.S. nationals shifted from the Office of Sustainable Fisheries to the Office of International Affairs. This rule updates the fax number in 50 CFR 300.154(b)(2) resulting from this shift.

In 50 CFR part 600, references to "International Fisheries Division" are changed to "Office of International Affairs" to reflect this reorganization.

Classification

The Assistant Administrator for Fisheries finds, pursuant to 5 U.S.C. 553(b)(B), that, because this final rule makes only minor, non-substantive changes, it is unnecessary to provide for public comment. Additionally, because this final rule is not a substantive rule, the 30-day delay in effective date under 5 U.S.C. 553(d) is not applicable.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine Resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: September 20, 2011.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons discussed in the preamble, NMFS amends 50 CFR parts 300 and 600 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

- 2. In § 300.2:
 - a. Remove the definitions of "Director, Alaska Region," "Director, Northeast Region," "Director, Northwest Region," "Director, Southeast Fisheries Science Center," "Director, Southeast Region," "Director, Southwest Region" and "Magnuson Act";
 - b. Revise the definition of "NMFS Headquarters"; and
 - c. Add definitions of "Magnuson-Stevens Act" "Regional Administrator" and "Science and Research Director" in alphabetical order to read as follows:

§ 300.2 Definitions.

Magnuson-Stevens Act means the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

NMFS Headquarters means NMFS, 1315 East-West Highway, Silver Spring, MD 20910. *Attention:* Office of International Affairs

Regional Administrator means the Administrator of one of the six NMFS Regions, described in Table 1 of § 600.502 of this title, or a designee.

Science and Research Director means the Director of one of the six NMFS Fisheries Science Centers described in Table 1 of § 600.502 of this title, or a designee, also known as the Science Director.

§ 300.11 [Amended]

- 3. In § 300.11, remove the definition of "Regional Administrator."
- 4. In § 300.121, revise paragraph (2) of the definition of "Lobster", and the definition of "Regional Administrator", to read as follows:

§ 300.121 Definitions.

Lobster * * * * *
(2) Caribbean spiny lobster or spiny lobster, *Panulirus argus*.

Regional Administrator means the Administrator of the Southeast Region, or a designee.

■ 5. In § 300.151, revise the definition of "Regional Administrator" to read as follows:

§ 300.151 Definitions.

Regional Administrator means Administrator of the Alaska Region, or a designee.

■ 6. In § 300.154, paragraph (b)(2) is revised to read as follows:

§ 300.154 Recordkeeping and reporting.

(b) * * * * *
(2) The report must be faxed to (301) 713-2313 within 5 calendar days of receipt of the Russian permit.

■ 7. In addition to the amendments above, in 50 CFR part 300, the references to "Magnuson Act" are revised to read "Magnuson-Stevens Act" in the following places only.

Section	Paragraph	Frequency
300.96	.....	1
300.121	Introductory text ..	2
300.128	.....	3
300.140	.....	1
300.141	Introductory text ..	2
300.144	.....	1
300.151	Introductory text ..	2
300.155	(d)(4)	1
300.156	(m)	1
300.157	.....	1

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 8. The authority citation for 50 CFR part 600 continues to read as follows:
Authority: 16 U.S.C. 1801 *et seq.*

■ 9. In part 600, the references to "International Fisheries Division" are revised to read "Office of International Affairs" in the following places only.

Section	Paragraph	Frequency
600.501	(d)(1)	1
600.518	(a)	1

Proposed Rules

Federal Register

Vol. 76, No. 186

Monday, September 26, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2011-0347; Airspace Docket No. 11-ASO-11]

Proposed Establishment of Class D and E Airspace and Amendment of Class E Airspace; Punta Gorda, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D and E airspace and amend existing Class E airspace at Punta Gorda, FL, to accommodate the new air traffic control tower at Punta Gorda Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. This action also would change the airport name and update the geographic coordinates of the Punta Gorda Airport.

DATES: 0901 UTC. Comments must be received on or before November 10, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey, SE., Washington, DC 20590-0001; Telephone: 1-800-647-5527; Fax: 202-493-2251. You must identify the Docket Number FAA-2011-0347; Airspace Docket No. 11-ASO-11, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

You may review the public docket containing the rule, any comments received, and any final disposition in

person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: John Fornito, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule 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 number, FAA-2011-0347; Airspace Docket No. 11-ASO-11) 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>. Those wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through <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/. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class D airspace, Class E surface area airspace and Class E airspace designated as an extension to a Class D surface area at Punta Gorda Airport, Punta Gorda, FL. Controlled airspace is necessary to support the operation of the new air traffic control tower, and would enhance the safety and management of IFR operations at the airport. Also, the airspace designation for existing Class E airspace extending upward from 700 feet above the surface would note the name change from Charlotte County Airport to Punta Gorda Airport, Punta Gorda, FL and would adjust the geographic coordinates to be in concert with the FAA's aeronautical database.

Class D and E airspace designations are published in Paragraphs 5000, 6002, 6004, and 6005 respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical

regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that 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 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 proposed 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 airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class D and E airspace and amend existing Class E airspace at Punta Gorda Airport, Punta Gorda, FL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, 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 part 71 will continue 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 Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Punta Gorda, FL [New]

Punta Gorda Airport, FL
(Lat. 26°55'08" N., long. 81°59'27" W.)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 4.5-mile radius of the Punta Gorda Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO FL E2 Punta Gorda, FL [New]

Punta Gorda Airport, FL
(Lat. 26°55'08" N., long. 81°59'27" W.)

That airspace extending from the surface up to and including 2,500 feet MSL within a 4.5-mile radius of Punta Gorda Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

ASO FL E4 Punta Gorda, FL [New]

Punta Gorda Airport, FL
(Lat. 26°55'08" N., long. 81°59'27" W.)

That airspace extending from the surface 2.4 mile either side of the 036° bearing from Punta Gorda Airport extending from the 4.5-mile radius to 7.0 miles northeast of the airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Punta Gorda, FL [Amended]

Punta Gorda Airport, FL
(Lat. 26°55'08" N., long. 81°59'27" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Punta Gorda Airport.

Issued in College Park, Georgia, on September 16, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.
[FR Doc. 2011-24640 Filed 9-23-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

49 CFR Part 27

RIN 2105-AD96

[Docket No. DOT-OST-2011-0177]

Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Department of Transportation (Department) proposes to revise its rule implementing the Air Carrier Access Act (ACAA) to provide greater accommodations for individuals with disabilities in air travel by requiring U.S. and foreign air carriers to make their Web sites accessible to individuals with disabilities and to ensure that their ticket agents do the same. It would also require U.S. and foreign air carriers to ensure that their proprietary and shared-use automated airport kiosks are accessible to individuals with disabilities. In addition, the Department proposes to revise its rule implementing Section 504 of the Rehabilitation Act to require U.S. airports to ensure that shared-use automated airport kiosks are accessible to individuals with disabilities. This supplemental notice of proposed rulemaking (SNPRM) applies to U.S. carriers and to foreign air carriers operating flights to, from, and in the United States. It also applies to U.S. airports with annual enplanements of 10,000 or more. The proposed rule establishes the technical criteria and procedures that apply to automated airport kiosks and to Web sites on which covered air transportation is marketed to the general public in the U.S. to ensure that individuals with disabilities can readily use these technologies to obtain the same information and services as other members of the public.

DATES: Comments should be filed by November 25, 2011. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT-OST-2011-0177 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow

the online instructions for submitting written comments.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

- **Fax:** (202) 493-2251.

Instructions: You must include the agency name and docket number DOT-OST-2011-0177 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, a business, a labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT:

Kathleen Blank Riether, Senior Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), kathleen.blankriether@dot.gov. You may also contact Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), blane.workie@dot.gov. You may obtain copies of this NPRM in an accessible format by contacting the above named individuals.

SUPPLEMENTARY INFORMATION: *Pilot Project on Open Government and the Rulemaking Process:* On January 21, 2009, President Obama issued a *Memorandum on Transparency and Open Government* in which he described how "public engagement enhances the Government's effectiveness and improves the quality

of its decisions" and how "knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge." To support the President's open government initiative, DOT Department of Transportation has partnered with the Cornell eRulemaking Initiative (CeRI) in a pilot project, Regulation Room, to discover the best ways of using Web 2.0 and social networking technologies to: (1) Alert the public, including those who sometimes may not be aware of rulemaking proposals, such as individuals, public interest groups, small businesses, and local government entities, that rulemaking is occurring in areas of interest to them; (2) increase public understanding of each proposed rule and the rulemaking process; and (3) help the public formulate more effective individual and collaborative input to DOT. Over the course of several rulemaking initiatives, CeRI will use different Web technologies and approaches to enhance public understanding and participation, work with DOT Department of Transportation to evaluate the advantages and disadvantages of these techniques, and report their findings and conclusions on the most effective use of social networking technologies in this area. DOT and the Obama Administration are striving to increase effective public involvement in the rulemaking process and strongly encourage all parties interested in this rulemaking to visit the Regulation Room Web site, <http://www.regulationroom.org>, to learn about the rule and the rulemaking process, to discuss the issues in the rule with other persons and groups, and to participate in drafting comments that will be submitted to DOT. For this rulemaking, CeRI will submit to the rulemaking docket a Summary of the discussion that occurs on the Regulation Room site; participants will have the chance to review a draft and suggest changes before the Summary is submitted. Note that Regulation Room is not an official DOT Web site, and so participating in discussion on that site is not the same as commenting in the rulemaking docket. The Summary of discussion and any joint comments prepared collaboratively on the site will become comments in the docket when they are submitted to DOT by CeRI. At any time during the comment period, anyone using Regulation Room can also submit their individual views to the rulemaking docket through the federal rulemaking portal regulations.gov, or by any of the other methods identified at the beginning of this document. For questions about this project, please

contact Brett Jortland in the DOT Office of the General Counsel at 202-366-9314 or brett.jortland@dot.gov.

Background and Organization

The Air Carrier Access Act (ACAA), passed by Congress in 1986, prohibits discrimination in airline service on the basis of disability. Since the Department of Transportation ("Department" or "DOT," also "we" or "us") issued the final rule implementing the ACAA, 14 CFR part 382 (Part 382) in 1990, it has amended the rule eleven times.¹ On May 13, 2008, the Department issued the most recent amendment to Part 382, which among other things, applied the rule to foreign air carriers and added new provisions concerning the onboard use of respiratory assistive devices and accommodations for passengers who are deaf, hard of hearing, and deaf-blind. See 73 FR 27614 (May 13, 2008). This latest amendment consolidated three separate NPRMs,² each of which proposed certain requirements and requested public comment on some issues that we did not address in the final rule due to the unavailability of critical cost and technical information. In the first NPRM [hereinafter "2004 Foreign Carriers NPRM"], for example, we had proposed to require carriers to make their Web sites accessible and asked for public comment on the cost and feasibility of making automated airport kiosks accessible (we did not propose specific accessibility requirements for automated kiosks). See NPRM entitled "Nondiscrimination on the Basis of Disability in Air Travel," Docket DOT-OST-2004-19482, RIN No. 2105-AC97. After reviewing the public comments on this NPRM, we concluded that we did not have enough information to adequately determine the cost impact and technical feasibility of requiring accessibility for Web sites or automated airport kiosks. In the preamble to the 2008 final rule, we

¹ The dates and citations for these amendments are the following: April 3, 1990, 55 FR 12336; June 11, 1990, 55 FR 23539; November 1, 1996, 61 FR 56409; January 2, 1997, 62 FR 16; March 4, 1998, 63 FR 10528; March 11, 1998, 63 FR 11954; August 2, 1999, 64 FR 41781; January 5, 2000, 65 FR 352; May 3, 2001, 66 FR 22107; July 8, 2003, 68 FR 40488; and May 13, 2008, 73 FR 27614.

² Nondiscrimination on the Basis of Disability in Air Travel, Notice of Proposed Rulemaking, 69 Fed. Reg. 64364-64395 (November 4, 2004); Nondiscrimination on the Basis of Disability in Air Travel—Medical Oxygen and Portable Respiration Assistive Devices, Notice of Proposed Rulemaking, 70 Fed. Reg. 53108-53117 (September 7, 2005); and Accommodations for Individuals Who Are Deaf, Hard of Hearing, or Deaf-Blind, Notice of Proposed Rulemaking, 71 Fed. Reg. 9285-9299 (February 23, 2006).

indicated our intention to revisit these issues in a SNPRM.

In the section that follows, we discuss the proposed Web site accessibility requirements and the questions we posed on airport kiosk accessibility in the 2004 Foreign Carriers NPRM and summarize the public comments we received. We then set forth the new measures we are proposing in this SNPRM in light of the public comments from the 2004 Foreign Carriers NPRM and our further research since the final rule was issued in 2008. These measures include requirements for U.S. and foreign air carriers to ensure that the public-facing content of Web sites they own or control conforms to the Website Content Accessibility Guidelines (WCAG) 2.0 Success Criteria and all Conformance Requirements at Level A and Level AA (discussed in detail in the next section). The proposed requirements would apply to foreign carriers only with respect to public-facing pages on Web sites they own or control that market covered air transportation to the general public in the U.S. A foreign carrier Web site would be covered by the proposed requirements if it advertises or sells to the general public in the U.S. air transportation that includes flights that begin or end in the U.S. We consider the following to be indicators that a foreign carrier Web site is likely marketing air transportation to the general public in the U.S., and if so, would be covered by the proposed Web site accessibility requirements: (1) Contains an option to view content in English, (2) advertises or sells flights operating to, from, or within the U.S., and (3) displays fares in U.S. dollars. While it is our intention to require all public-facing content on the Web sites of U.S. carriers to meet the proposed Web site accessibility requirements, only those pages on the Web sites of foreign carriers involved in marketing covered air transportation to the general public in the U.S. would be subject to the Web site accessibility requirements. Web content on foreign carrier Web sites marketing air transportation to the general public outside the U.S. would not be covered. We also intend that Web site accessibility requirements cover a carrier's new or completely redesigned primary Web site brought on line 180 or more days after the effective date of the final rule. Updating the information content on one or more Web pages would not be considered a complete redesign of a Web site, which entails technical changes to a substantial portion of the site (e.g., visual design ("look and feel")) of the site, an overall

upgrade of the site to ensure compliance with technical standards, reorganizing the site's information architecture). By one year after the final rule's effective date, we propose to require Web pages on an existing Web site associated with booking or changing a reservation, flight check-in, and accessing a personal travel itinerary, frequent flyer account, flight status or schedules, and carrier contact information to be conformant either on a primary Web site or by providing accessible links from the associated pages on a primary Web site to corresponding accessible pages on a mobile Web site. All covered Web pages on a carrier's primary Web site would have to be conformant by two years from the final rule's effective date. We will continue to require that a carrier make discounted Web-based fares and other Web-based amenities available to passengers who self identify as being unable to use a carrier's Web site due to their disability even if the Web site meets the WCAG 2.0 accessibility requirements. We expect that only a very small segment of the disability community would not be able to use an "accessible" Web site (e.g., an individual who is deaf-blind).

The Department considers marketing covered air transportation to the general public in the U.S. on Web sites that are inaccessible to individuals with disabilities to be discriminatory and a violation of the Air Carrier Access Act (49 U.S.C. 41705) and an unfair trade practice in violation of 49 U.S.C. 41712. The Department's authority to prohibit unfair and deceptive practices under 49 U.S.C. 41712 applies not only to carriers, but also to "ticket agents," (i.e., a person other than a carrier "that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation"). See 49 U.S.C. 40102(a)(45). This SNPRM, in addition to proposing to require U.S. and foreign air carriers to ensure that their Web sites are accessible in accordance with WCAG 2.0 standards, would explicitly require carriers to ensure that when their agents are providing schedule and fare information and marketing covered air transportation services to the general public in the U.S. on Web sites, such Web content also meets the WCAG 2.0 standards. Carriers are responsible for the activities of their agents, and as such, this NPRM would require them to ensure that those agents comply with the Web site accessibility requirements, or carriers could face enforcement action. See 14 CFR 382.15(a). Carriers would not, however, be required to ensure the compliance of agent Web

sites with WCAG 2.0 standards if the agent's annual receipts are less than the threshold established under the applicable small business size standard defined by the Small Business Administration (SBA). See 13 CFR 121.201.³ Carriers would still be permitted to market covered air transportation on the inaccessible Web sites of ticket agents that meet the small business size standard. However, we would require carriers to ensure that those small ticket agents make discounted Web-based fares and other Web-based amenities available to passengers who self identify as being unable to use the agent's inaccessible Web site due to their disability. This NPRM would also require carriers to ensure that ticket agents with "accessible" Web sites still make discounted Web-based fares and other Web-based amenities available to passengers who self-identify as being unable to use the agent's Web site due to their disability.

As for automated airport kiosks, we are proposing to require U.S. and foreign air carriers that own, lease, or control automated kiosks at U.S. airports having 10,000 or more enplanements per year⁴ to ensure that all kiosk orders initiated sixty (60) days after the effective date of the rule for installation at U.S. airports are for models that meet a specified accessibility standard. The accessibility standard for automated airport kiosks that we propose to require is based on the U.S. Department of Justice's 2010 ADA Standards for Accessible Design (2010 ADA Standards) applicable to automated teller machines (ATM) and fare machines and on other selected accessibility criteria. We propose to apply this standard to both proprietary and shared-use automated airport kiosks. Shared-use automated airport kiosks are self-service transaction machines provided by an airport, a carrier, or an independent service provider with which any carrier having a compliant data set can collaborate to enable its customers to independently access the flight-related services it offers. Where automated airport kiosks

³ Under 13 CFR 121.201, travel agents and tour operators are defined as small business concerns if their annual revenues do not exceed \$3.5 million and \$7 million, respectively (excluding funds received in trust for unaffiliated third party bookings/sales, but including the commissions earned from such bookings/sales).

⁴ The Federal Aviation Administration (FAA) recognizes 3,364 of the 19,847 airports in the U.S. as open to the public. Of these, 382 are primary airports defined as having more than 10,000 enplanements annually. Primary airports include 29 large, 37 medium, 72 small, and 244 non-hub commercial service airports.

are jointly owned, leased, or controlled by U.S. airports and carriers, we propose to require that the airport operators and carriers enter into written agreements spelling out the respective responsibilities of the parties for meeting the accessibility requirements. We also intend to continue to require that carriers ensure equivalent service to passengers with a disability who are unable to use their automated airport kiosks due to their disability (e.g., passenger is unable to use an inaccessible automated airport kiosk, passenger is unable to use an automated airport kiosk that meets the accessibility standard because the passenger cannot reach the function keys due to a disability).

We invite all interested parties to comment on the proposals set forth in this proposed rule. Our final action will be based on comments and supporting evidence from the public filed in this docket, and on our own analysis and regulatory evaluation.

Proposals and Questions in the 2004 Foreign Carriers NPRM on Web Site and Automated Airport Kiosk Accessibility

1. Web Site Accessibility

Today's passengers increasingly rely on air travel Web sites for information about airline services, making reservations, and obtaining discounted airfares. While these Web sites are more accessible to people with disabilities today than ever before, the degree of accessibility can vary significantly not only from one Web site to another, but also from page to page on a given site. Not all information and services available to the public on these Web sites are accessible to people with disabilities. The Department views Web site accessibility as a vital step toward making the convenience and cost savings of booking the best airfares and checking-in online available to people with disabilities.

The 2004 Foreign Carriers NPRM: In the 2004 Foreign Carriers NPRM we proposed to require carriers to make their Web sites compliant with the accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended (hereinafter Section 508) as a means of ensuring that all domestic and international flight and other information on their Web sites is accessible to persons with visual impairments. For foreign air carriers, we proposed that only the portion of their Web sites displaying information related to flights serving U.S. airports would have to meet the Section 508 standard. The requirements were also to apply to

multi-carrier travel service Web sites owned by groups of carriers or with whom carriers have contractual or agency relationships. Under Section 508, Federal agencies are required to make their electronic and information technology, including Web sites, accessible to persons with disabilities. Generally, this means use of text labels or descriptors for graphics and certain formatting elements. In the 2004 Foreign Carriers NPRM, we chose to use the Section 508 standard in proposing Web site accessibility requirements under our ACAA authority. Covered entities were to have two years from the final rule's effective date to make existing Web sites accessible and new Web sites coming on line after the effective date were to be accessible immediately.

We sought public comment on whether the Section 508 standard was the appropriate accessibility standard to apply, whether the standard should be modified for the airline Web site context, and whether other domestic or foreign accessibility standards would be appropriate. We also asked for comment on whether additional or specific requirements concerning online travel agencies (e.g., Web sites that provide schedule and fare information and market for carriers) should be added to the Part 382 section on contractor compliance (now section 382.15). We noted that under the proposed requirements all services offered to passengers on a carrier's Web site (e.g., seat selection) would have to be accessible to users with disabilities and asked for comment on whether carrier Web sites that allow passengers to request special services should be required to permit passengers to request disability accommodations.

The Comments: Disability community commenters strongly supported all the proposed requirements for Web site accessibility, including applying the Section 508 standard to the Web sites of carriers, their affiliates, contractors, and agents offering air transportation. Some also wanted accessibility requirements specifically applicable to online travel agencies (OTAs) to be included in what is now section 382.15. A few disability commenters urged the Department to consider the Web site Content Accessibility Guidelines (WCAG) developed by the World Wide Web Consortium (W3C) Web Accessibility Initiative as an alternative to the Section 508 standard, since many Internet-based commercial transaction organizations already use those guidelines. Some disability commenters explicitly expressed support for requiring Web sites to be accessible to people with disabilities other than blindness and

other visual disabilities. There was also a strong disability community response favoring a measure discussed in the NPRM preamble to require carriers that offer passenger services online (e.g., seat selection) to also allow passengers to make special service requests online for disability accommodations. While most disability commenters did not object to a two-year timeframe from the rule's effective date to bring existing Web sites into compliance, some favored a much shorter period (e.g., six months from the effective date). Most supported requiring carriers to make lower fares and other special offers on the carrier's Web site available to any passenger with disability who could not use an inaccessible Web site by calling a customer service line.

Many carriers and carrier organizations opposed requiring Web site accessibility on the grounds that it would be too difficult and expensive to accomplish. Several made note of the fact that the regulatory analysis had not quantified the benefits of requiring carriers to make their Web sites accessible. Yet a number of carriers, including foreign carriers, supported the goal of Web site accessibility while disagreeing with the proposed standards and timeframes. A number of carriers supported applying the WCAG standards and some carriers (most of them foreign) reported already taking steps toward applying the WCAG standards to their Web sites.

Many U.S. and foreign air carriers and carrier associations contended that the Department had greatly underestimated the initial and ongoing costs of Web site accessibility. While the regulatory evaluation of the 2004 Foreign Carriers NPRM estimated the cost to U.S. carriers of making their Web sites accessible to be a one-time cost over two years of about \$17,600 per carrier, the Air Transport Association (ATA) and some individual carriers themselves put the actual cost of initial compliance as ranging from \$300,000 to more than \$1,000,000 per carrier, with recurring costs of \$10,000 to \$200,000 per carrier annually. Generally carriers felt that compliance would take much longer to accomplish initially. For example, ATA reported that two of their members estimated that it would require 4,700 and 6,000 hours respectively of planning, programming, and testing to comply. Carriers also felt that compliance would involve much more expense to maintain over the long term than the Department had estimated. Again, few carriers provided specific cost estimates, or when they did, few provided any breakdown of the cost allocation.

Some smaller carriers suggested that they would remove passenger information from their own Web sites and place it on the Web site of a mainline partner rather than incur the cost of compliance themselves. ATA not only opposed the Web site accessibility requirements as too costly, but also did not support a requirement to allow passengers with disabilities to book special service requests online. They maintained that if we adopted the proposed requirements, we should limit their application to Web sites within the U.S., and only to the portion of Web sites necessary to booking a flight. They also urged that we allow compliance with accessibility standards other than Section 508 and recommended that Web site accessibility be limited to accommodating individuals who are blind. A few carriers wanted to expand the phase in period from two to five years so compliance could be accomplished during scheduled maintenance operations.

Foreign carriers also disagreed with the Department's estimate of the cost (\$1,680 per foreign carrier over two years) and of the difficulty of making Web sites accessible, but provided little data supporting their assertions that the cost would be prohibitive. Almost unanimously, foreign carriers opposed any requirement to ensure the accessibility of contractor Web sites, explaining that they generally lacked any control over the design of these sites. This view was shared by most U.S. carriers as well. Several foreign carriers, among other commenters, asserted that limiting the applicability of Web site accessibility requirements to flights covered by Part 382 was neither practical nor technically feasible. Foreign carriers that did not oppose Web site accessibility requirements still favored much longer implementation timeframes, limiting the Web content required to be accessible (e.g., text pages only, booking function only, etc.), and allowing them to choose among various accepted accessibility standards. The International Air Transport Association (IATA) took the position that Web site accessibility requirements should only apply to foreign carrier Web sites maintained in the U.S. and only with respect to content essential for booking a flight. IATA and a number of individual foreign carriers opposed requiring carriers to allow passengers with disabilities to book special service requests online.

Associations representing travel agencies held similar views about the cost impact, insisting that our preliminary regulatory evaluation had missed the mark. The Interactive Travel

Services Association (ITSA) argued that compliance for travel agencies would be far more technically complex than we had anticipated and estimated the cost of basic Web site compliance with the Section 508 standard to be \$200,000–\$300,000 per company with millions more in ongoing maintenance costs. ITSA recommended that we (1) apply accessibility standards only to ticket agent sites geared to selling air transportation to persons in the U.S.; (2) not specify a particular Web site accessibility standard; and (3) allow a “reasonableness standard” to determine when infrequently visited Web pages could be exempted from accessibility requirements.

The American Society of Travel Agents (ASTA) reported that 90% of travel agencies are small businesses with 4–6 employees and that we had not considered the real impact of compliance on small businesses. While the majority of travel agencies have Web sites, ASTA noted that about half were created in-house, by a friend, or by using a template. ASTA reported that of these travel agency Web sites, only 12% enabled clients to book online and that bookings from online transactions generated only 5% of the agencies' total revenues.

Cendant Corporation (Cendant) addressed some of the technical problems with ensuring accessibility on Web sites where control of Web page content is shared by multiple entities and offered suggestions on how responsibility for accessibility should be allocated. Cendant suggested that when a carrier enters into a marketing agreement with a hosting Web site, the compliance responsibility should be allocated to the party that deploys or controls the site's front-end code (user interface). They recommended that carriers in co-branding relationships with other carriers or marketing agents should only be responsible for Web site platform content that they directly develop, control, manage, or maintain, and that they should provide exit notices to users advising them when they've clicked a link to an outside Web site where the content may not be accessible. Cendant also endorsed requiring the WCAG rather than Section 508 accessibility standard.

As a group, U.S. ticket agents opposed any Web site accessibility rules applying to them that did not apply to foreign ticket agents as well. Like ATA, they urged the Department to limit Web site accessibility requirements to accommodating individuals with visual disabilities.

Decision in the 2008 Final Rule: We deferred final action on Web site

accessibility requirements due to the wide range in estimated compliance and maintenance costs asserted by the commenters, as well as their varying claims regarding the level of difficulty and technical feasibility of bringing a Web site into compliance. We were unable to resolve these differences based on the record in that proceeding and decided the best course was to revisit the issue in a later rulemaking. In the interim, we adopted a provision in the final rule prohibiting carriers from charging fees for reservation assistance to passengers with disabilities who cannot use inaccessible Web sites and requiring carriers to make Web fare discounts available to such passengers.

Current Proposed Rule: In this SNPRM we propose to require U.S. and foreign air carriers to ensure that the public-facing air transportation-related content of Web sites they own or control is accessible to individuals with disabilities. The proposed accessibility requirements would apply to all public-facing content on the Web sites of U.S. carriers. Foreign carrier Web sites would be covered only with respect to Web pages involved in marketing (advertising or selling) covered air transportation to the general public in the U.S. We would consider a foreign carrier Web site that has an option to view content in English, that advertises or sells flights operating to, from, or within the U.S., and/or that shows fares in U.S. dollars as likely to be marketing air transportation to the general public in the U.S., and if so, covered by the proposed Web site accessibility requirements. Web content on a foreign carrier Web site that markets air transportation to the general public outside the U.S. would not be covered.

With respect to air transportation services advertised or sold online, we note that carriers offer an ever-expanding array of services on their Web sites today, including air travel packages. The Department's authority to regulate air transportation extends to the marketing of air travel packages that include a tour (i.e., a combination of air transportation and ground accommodations), or tour component (e.g., a hotel stays) that must be purchased with air transportation. See 14 CFR Part 399.84. Over the years, the Department has taken numerous enforcement actions against travel companies and tour providers selling air tour packages for violating the Department's advertising requirements. See, e.g., *Grand Casinos, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 399.84*, Order 2005–5–5 (May 26, 2005); *Trafalgar Tours West, Inc. d/b/a Trafalgar Tours, Violations of 49 U.S.C.*

§ 41712 and 14 CFR Part 399, Order 2007-8-24 (August 24, 2007); *Pacific Delight Tours, Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 399.84*, Order 2008-2-13 (February 7, 2008); *Unique Vacations Inc., Violations of 49 U.S.C. § 41712 and 14 CFR Part 399.84*, Order 2010-11-7 (November 8, 2010). In this NPRM, we are proposing to require carriers offering travel packages online that include covered air transportation must ensure that their Web site pages marketing all package components (e.g., hotel or rental car reservations) are conformant with the WCAG 2.0 accessibility requirements. When carriers provide links on their Web sites to third party Web sites for booking the non-air travel components of travel packages marketed on their Web sites that include covered air transportation, the Department solicits comment on whether it should recommend or require such carriers to provide a notice that the third party Web site may not be accessible when the link is activated.

As for the time period provided for carriers to make their Web sites accessible, we propose that carriers implement the Web site accessibility requirements for primary Web sites incrementally in three phases over a two-year period.

- Newly created or completely redesigned primary Web sites placed online 180 or more days after the effective date of the final rule would have to comply with WCAG 2.0 at Level A and Level AA.

- Web pages on an existing Web site that provide core air travel services and information (i.e., booking or changing a reservation, checking-in, and accessing a personal travel itinerary, flight status, personal frequent flyer account, flight schedules, or the carrier's contact information) would have to be conformant one year after the effective date of the final rule. These specific services were selected for the second phase of Web site accessibility because we view them as being essential and each appeared on most of the U.S. and foreign air carriers' mobile Web sites we reviewed. Web site conformance could be achieved in one of two ways. Web pages containing core air travel services and information could either be directly compliant with WCAG 2.0 at Level A and Level AA on a carrier's primary Web site or a carrier can provide accessible links from the non-conforming pages on its primary Web site to the corresponding pages on its mobile Web site that are conformant with WCAG 2.0 at Level A and Level AA. In addition to ensuring its mobile site conforms with WCAG 2.0 at Level

A and Level AA, we solicit comment on whether we should require a carrier to follow the World Wide Web Consortium (W3C) Recommendation 28 July 2008, Mobile Web Best Practices (MWBPP) 1.0, Basic Guidelines (see <http://www.w3.org/TR/mobile-bp/>) if it elects to provide a link from a non-conforming page on its primary Web site to a page on its mobile Web site.

- All covered pages on a carrier's primary Web site, including those made conformant during the second phase by a link to a conformant page on the carrier's mobile Web site, would have to meet the WCAG 2.0 at Level A and Level AA standard two years after the effective date of the final rule.

We believe the proposed approach to implementing the requirements balances the carriers' need for flexibility and adequate time to fully implement an accessible primary Web site, while establishing priorities for accessibility of existing Web sites based on the online services of greatest interest and value to air travelers with disabilities. By allowing carriers to choose how to initially make certain online customer service functions accessible (e.g., either on their primary Web site or on a mobile site), carriers can determine which approach is most feasible for them based on factors such as the complexity of the Web pages associated with these functions on their primary Web sites, the robustness of the functions on their mobile Web sites, and how they wish to allocate their available resources for Web site accessibility. Since only entirely new or completely redesigned Web sites placed online starting 180 or more days after the rule's effective date would have to be accessible, carriers would have up to two years to make all covered pages on their primary Web sites accessible (i.e., if they chose to make the core customer service functions accessible through links on the associated primary Web site pages to accessible pages on their mobile Web sites).

We note that many regional and charter carriers have Web sites that provide information related to covered air transportation (e.g., route maps, customer service plans, contracts of carriage, etc.) but do not sell airline tickets. In most instances, these carriers' Web sites provide links to the Web sites of their mainline partners where covered flights can be booked and other flight-related services obtained. Although the Web sites of these smaller carriers are covered for purposes of this rule, the carriers are not required to comply with interim provisions that do not apply to them (e.g., if the carrier's Web site does not provide booking or

check-in functions or flight status information, the carrier need not provide such functions in accessible format on its Web site). Such carriers would still be required to ensure that the links on their Web sites to their partner carriers' Web sites were accessible by one year after the effective date of the final rule and that all the public-facing content of their Web sites was conformant with WCAG 2.0 by two years after the effective date.

The Department considered proposing to require that carriers post WCAG 2.0 "conformance claims" on their Web sites to support easy identification of accessible Web pages and verification of a Web site's compliance status. ("Conformance claim" is W3C's term of art for a statement by an entity giving a brief description of the Web page(s) on its Web site for which the claim is made, the date of conformance, the WCAG guidelines and conformance level satisfied, and the Web content technologies relied upon. Conformance is defined only for Web pages, but a conformance claim may be made to cover one Web page, a series of pages, or multiple related pages.) While conformance claims appear to be our best option for identification and compliance verification purposes, we are concerned that the resources involved in preparing and maintaining conformance claims for complex and dynamic carrier Web sites may not be feasible. We therefore invite public comment on effective alternative means for readily identifying compliant Web pages during the Web site conversion period and for verifying overall Web site accessibility after the compliance deadline.

During the interim period while the inaccessible public-facing content of their Web sites is being updated in accordance with the implementation timeframes, the Department will continue to require carriers to make discounted Web-based fares and other Web-based amenities available to passengers who self-identify as being unable to use a carrier's inaccessible Web site due to their disability. This means, for example, that Web-based discount fares must be disclosed to any prospective passenger who inquires about fares through other channels (e.g., telephone or walk-in) and who states that he or she has a disability and is unable to use the inaccessible Web site, if his or her itinerary qualifies for the discounted fare. In addition, after carriers' Web sites are fully conformant with all applicable accessibility requirements, we will continue to require them to make Web-based discounts and amenities available as

described above to any passenger who states that due to a disability, he or she is unable to use a carrier's accessible Web site.

With respect to carriers that market their airline tickets on their agents' Web sites, we propose to require that they ensure that their airline tickets are marketed and sold on ticket agent Web sites that conform to the accessibility standards set forth in WCAG 2.0. We are proposing to provide carriers two years from the effective date of the rule to ensure that their agents' Web sites are accessible as described above. After this time, the Department would take enforcement action against carriers that market air transportation on an agent's inaccessible Web site, unless the agent qualifies as a small business (*i.e.*, having annual revenues less than the applicable threshold set forth in 13 CFR 121.201). In those situations, carriers would be required to ensure that those small ticket agents make discounted Web-based fares and other Web-based amenities available on the carrier's behalf to passengers who self identify as being unable to use the agent's inaccessible Web site due to their disability (*e.g.*, an individual who is deaf-blind and contacts the carrier by relay service to make a reservation). Methods carriers could use to ensure that ticket agent Web sites marketing their travel services are accessible include sending a notice to their agents regarding their obligations to have an accessible Web site and make discounted fares or other applicable Web-based amenities available to individuals who are unable to use an agent's Web site due to a disability. Carriers could also periodically (once or twice a year) monitor ticket agent Web sites, marketing their travel services to ensure that the Web sites are accessible. Another possibility is for carriers to monitor disability complaints received by its ticket agents to see if any of the complaints allege that a ticket agent's Web site is inaccessible or if a ticket agent refused to make the services discussed above available to individuals who cannot use their Web sites due to a disability.

Although we asked for comment in the 2004 Foreign Carriers NPRM, we decided against proposing a requirement for carriers to provide a Web site function allowing passengers to add special service requests for disability accommodations to their passenger record. Our decision was based on comments from several carriers indicating the importance of passengers speaking directly with an agent when requesting disability services to avoid any misunderstandings

about their specific accommodation needs.

The departure from our proposal in the 2004 Foreign Carriers NPRM to require Web site conformance with the Section 508 standards is based in part on comments from the 2004 Foreign Carriers NPRM but mostly on developments that have occurred since the final rule was issued. Comments on our proposal in the 2004 Foreign Carriers NPRM to adopt the Section 508 Web site accessibility standard were mixed. Although there was significant support for the Section 508 standard, a number of commenters urged us to consider adopting the WCAG standard or at least allowing carriers to choose which standard to apply. We did not consider adopting the then current WCAG 1.0 standard, however, because some requirements were not testable, thus compromising compliance verification. In December 2008, following a lengthy development process with Web developers, accessibility experts, and the disability community, the W3C adopted WCAG 2.0, incorporating developments in Web technology and lessons learned since WCAG 1.0 (1999).

WCAG 2.0 has 12 guidelines organized under four design principles: Perceivable, operable, understandable, and robust. Each guideline has testable success criteria defined at three levels (A, AA, and AAA) for determining Web site conformance. Level A conformance is the minimum level of conformance for providing basic accessibility and means that Web pages satisfy all the Level A success criteria. Level AA conformance provides a stronger level of accessibility and means that the Web pages satisfy all the Level A and Level AA success criteria. Level AAA conformance provides a very high level of accessibility and means that the Web pages satisfy all the Level A, Level AA, and Level AAA success criteria. Level AA conformance provides better accessibility and barrier reduction for accessing Web content than Level A (*e.g.*, Level AA success criteria include the capability to resize text up to 200% without loss of content or functionality and consistent identification of components that have the same functionality within a set of Web pages). While Level AAA conformance provides the most robust level of accessibility, W3C does not recommend requiring it for entire Web sites because it is not possible to satisfy all Level AAA success criteria for some content.

For each conformance level, a non-conforming page is considered compliant if it provides an accessible mechanism for reaching a conforming

alternate version of the page that meets the success criteria, is up to date, and contains the same information and functionality in the same language. A conforming alternate version of a Web page is intended to provide people with disabilities equivalent access to the same content and functionality as a directly accessible Web page under WCAG 2.0. Nonetheless, WCAG 2.0 implementation guidance notes that providing a conforming alternate version of a Web page is a fallback option for WCAG conformance and that the preferred method of conformance is to make all Web page content directly accessible. Therefore, the intent of these proposed accessibility requirements is that Web site content be directly accessible whenever possible. However, the proposal does not explicitly require that a conforming alternate version be used *only* when needed to provide the Web content as effectively to individuals with disabilities as to those without disabilities. The Department seeks comment on whether we should explicitly prohibit the use of conforming alternate versions except *when necessary* to provide the information, services, and benefits on a specific Web page or Web site as effectively to individuals with disabilities as to those without disabilities.

In early 2010, the U.S. Access Board (Board) issued an advance notice of proposed rulemaking (ANPRM) to update various accessibility standards and guidelines, including the Section 508 standard which has been in effect for more than a decade and that applies to electronic and information technology developed, procured, maintained, or used by Federal agencies. See 75 FR 13457 (March 22, 2010). Due to the scope and complexity of this rulemaking, it may take two or more years to issue a refreshed Section 508 standard, which we anticipate will be significantly different from the current version. While the timing and scope of the Section 508 refresh were significant factors in our decision to propose WCAG 2.0 as the Web site accessibility standard, the most important consideration was the Board's stated intention in the ANPRM to "seek[s] to harmonize, to the extent possible, its criteria with other standards and guidelines in order to improve accessibility and facilitate compliance." See 75 Fed. Reg. 13457, 13458 (March 22, 2010). The Board adopted this position based on the recommendations of the Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC), which it

established in 2006 to review the existing Section 508 standards and Telecommunications Act accessibility guidelines and to recommend changes. As part of its review, TEITAC, which represented industry, disability groups, standard-setting bodies in the U.S. and abroad, and government agencies, sought to address key issues driving the development of electronic information technology, including the need for standardization across markets globally. In its report to the Board in 2008, TEITAC recommended that the Board seek to harmonize the Section 508 standards with WCAG 2.0 (which were still being finalized) in order to improve accessibility and facilitate compliance. As a result, in the March 2010 ANPRM, the Board sought comment on a harmonization approach with WCAG 2.0 in which Web pages (as defined by WCAG 2.0), which are Level AA conformant, be deemed to be in conformance with the technical criteria it proposed in Chapter 4 (Platforms, Applications, and Interactive Content), Chapter 5 (Electronic Documents), and Chapter 6 (Synchronized Media Content and Players), and certain other specified provisions of the draft. See 75 Fed. Reg. 13457, 13460 (March 22, 2010). WCAG 2.0, which is internationally recognized as the most up-to-date and widely used accessibility standard available, addresses to varying degrees, access issues for people with visual, hearing, motor, cognitive, and neurological disabilities. The WCAG 2.0 specification and detailed technical guidance are available to the public free of charge at <http://www.w3.org/TR/WCAG20/>. Although the Department initially intended to require accessibility for visual disabilities only, recognition by TEITAC and other technology experts of the significant commercial and other benefits of harmonizing with international accessibility standards persuaded us to propose the more inclusive WCAG 2.0 standard for air travel Web site accessibility at this time. We anticipate that approximately 4.3 million Web site visitors with disabilities will benefit from these proposed Web site accessibility requirements in the first 10 years after the effective date of the rule.

Request for Public Comments: Below we discuss the requirements we are proposing in more detail, report some preliminary findings of our regulatory evaluation, and pose questions for public comment.

Applicability—We propose to apply the Web site accessibility requirements to the public-facing content of U.S. and foreign carrier primary Web sites that market air transportation and to limit

the application to foreign carrier Web sites to Web pages involved in marketing covered air transportation to the general public in the U.S. Is there any reason to limit the applicability of this requirement to the largest U.S. and foreign air carriers, such as those that operate at least one aircraft with more than 60 seats for example? Should carriers that only provide charter service be subject to different Web site accessibility requirements than carriers that provide scheduled service? Should we exclude from Web site accessibility requirements carriers that advertise air transportation but do not sell airline tickets?

We also propose to indirectly cover the Web sites of ticket agents that exceed the small business revenue thresholds established by the SBA. Should carriers not be required to ensure that the Web pages on which online ticket agencies market and sell their airline tickets are accessible? Should carriers only be required to ensure Web page accessibility of online ticket agencies that market and sell more than a certain percentage (e.g., 10%) of the carrier's total ticket sales annually? Should this rule apply to ticket agents directly with respect to ensuring that their Web pages on which they market and sell covered air transportation to the general public in the U.S. are accessible? Should DOT wait for the Department of Justice to move forward with its rulemaking under Title III of the Americans with Disabilities Act before promulgating regulations that require ticket agent Web sites to be accessible?

Technical Accessibility Standard—Should the Department consider requiring a set of technical or performance accessibility standards other than WCAG 2.0? Besides the Section 508 standards, what other accepted Web site accessibility standards are available? In the final rule, should the Department permit carriers to comply with Web site accessibility requirements by meeting any accepted Web site accessibility standard? Does WCAG 2.0 Level AA conformance provide a sufficient level of accessibility? Are there sufficient technical assistance resources available to support companies in implementing the standard? As an alternative, should Level A conformance or Level A plus conformance with some number of selected Level AA success criteria be required as long as the result is at least as strong as the current Section 508 Web accessibility standard? As stated earlier, the intent of the proposed accessibility requirements is that Web site content be directly accessible whenever possible. A

conforming alternate version of a Web page must meet the WCAG 2.0 success criteria, be up to date, contain the same information and functionality in the same language, and be reachable via an accessible mechanism from the primary Web site. The Department seeks comment on whether it should explicitly prohibit the use of conforming alternate versions except *when necessary* to provide the information, services, and benefits on a specific Web page or Web site as effectively to individuals with disabilities as to those without disabilities. The Department is also interested in public comment on what circumstances would make it necessary to use a conforming alternate version to provide the information, services, and benefits on a specific Web page or Web site as effectively to individuals with disabilities as to those without disabilities. With respect to specific technical criteria, we ask for comment on whether timeouts present barriers to using Web sites and on the cost or difficulty potentially associated with providing timeout capability.

In addition to a requirement to comply with the proposed technical accessibility criteria for Web sites, we are considering requiring covered entities to also ensure their Web sites are usable by individuals with disabilities. During a meeting between DOT officials and representatives of the National Federation of the Blind (NFB) held on June 29, 2011, NFB recommended that any DOT proposal on Web site accessibility contain not only technical standards but also a performance standard to ensure that a Web site that meets specific technical criteria is also useable by people with visual impairments. NFB emphasized that compliance with a technical standard without a clear understanding of the underlying accessibility goal can lead to implementing the standard in a way that hinders access for people with disabilities. For example, the WCAG 2.0 requirement for headings to identify items on a Web page (information, navigation controls, graphics, etc.) can result in a Web page with so many headings that it cannot be efficiently navigated by a screen reader. Similarly, full compliance with the WCAG 2.0 requirement to label links on a Web page with an "alt-tag" is not helpful if the alt-tags do not adequately explain the link's purpose. Because implementing the WCAG 2.0 requirements for headings and alt-tags to label Web page content is somewhat subjective, there is a need to ensure that a Level AA-compliant Web page is usable by persons with a disability. To

ensure that Web pages are technically compliant in a manner that ensures accessibility and usability to people with disabilities, NFB recommends that, in addition to any proposed technical accessibility standards, covered Web pages meet a performance standard such that the Web pages ensure that persons with disabilities "may access or acquire the same information, engage in the same interactions, and enjoy the same products and services" offered to Web site users without disabilities "with a substantially similar ease of use." We recognize that whether ease of use is "substantially similar" depends to a significant extent on the user's screen reader or other assistive technology, which is beyond the control of the carrier. For this reason, we may need to specify the types and versions of various assistive technologies to which the performance standard must apply. The Department, therefore, seeks comments on the adoption of a performance standard in the final rule, in addition to the proposed technical standards, as well as on the types and versions of assistive technologies to which a performance standard should apply. We also seek comment on the feasibility and value of requiring airlines to work with the disability community (e.g., establish a committee on Web site accessibility) to assist them in maintaining the accessibility of their Web site through periodic monitoring and feedback on the Web site's usability.

Scope of the requirements—We are proposing the accessibility standards to cover public-facing content on Web sites owned or controlled by U.S. carriers and foreign carriers where air transportation is marketed to the general public in the U.S. Should accessibility requirements cover all public-facing Web site content on the Web sites, or only the portion(s) of the Web site necessary to book a flight? Should the accessibility requirements apply to either mobile Web sites or primary Web sites, or to both? Are the services and information available on mobile Web sites generally as easy to use as their counterparts on a carrier's main Web site or not? We also solicit comment on whether the Department should require carriers to ensure that their mobile Web sites are conformant with WCAG 2.0 at Level A and Level AA, or follow the World Wide Web Consortium (W3C) Recommendation 28 July 2008, Mobile Web Best Practices (MWBWP) 1.0, Basic Guidelines, or both?

Should carriers be required to ensure that any third party software that is downloadable from a link on the carrier's Web site (e.g., deal finding software) is accessible? Can mobile

applications be programmed to comply with WCAG 2.0 accessibility standards? Should the Department require electronic communications generated by a carrier, such as reservation confirmation, flight status notifications, and special offer e-mails to be accessible? What are the costs and technical difficulties of ensuring that such content is accessible?

Costs and Benefits—Our preliminary regulatory evaluation estimates the net benefits of the proposed air travel Web site accessibility requirements over the entire 10-year analysis period at \$55.3 million using the 7 percent discount rate and \$74.7 million using the 3 percent discount rate. The total estimated benefits of \$122.1 million discounted at 7% and \$147.3 million discounted at 3% were calculated based on the expected time savings for people with disabilities who can use an accessible Web site, as well as the savings to carriers resulting from avoided calls (assisting passengers with disabilities who cannot use their Web sites). The monetized value of the time savings for individuals with disabilities and cost savings to carriers associated with compliant air travel Web sites is estimated at more than \$14 million in the first year after air travel Web sites become fully compliant with the proposed Web site accessibility standards. Our preliminary regulatory analysis underscores that many unquantifiable benefits are also expected to result from the proposed requirements, including increased air travel by persons with disabilities, reaching more consumers with disabilities, and improved understanding by carriers of their Web sites' content, structure, and performance issues.

The total estimated costs associated with the proposed accessibility requirements were based on the Web site size (class sizes of largest, large, small, smallest), estimated number of revision hours by type of task (site layout and home page reorganization, conformance evaluation/certification, per individual site page) and the cost per hour for programming and overhead. The estimated cost per site for making primary Web sites completely accessible is estimated at \$225,000 for the largest sites having an average of 900 pages (1,500 hours), \$105,000 for large sites having an average of 300 pages (700 hours), \$50,400 for small sites having an average of 120 pages (420 hours) and \$31,200 for the smallest sites having an average of 60 pages (260 hours). These costs for bringing the Web sites into initial compliance, which are based on a review of carrier Web sites

using a collection of Web development tools, would be incurred during the first 2 years of the 10-year analysis period. Thereafter, U.S. and foreign carriers would incur an estimated \$2.0 million annually and ticket agents an estimated \$2.6 million annually in costs to ensure that their primary Web sites remain fully compliant. We are seeking comment on whether these cost estimates for Web site compliance are reasonable and address the relevant cost components. Total compliance costs for all entities, including U.S. and foreign carriers and their agents that are not small business concerns, to comply with the proposed Web site accessibility standards are estimated at \$66.8 million using the 7 percent discount rate, and \$72.6 million using the 3 percent discount rate. As with the estimated benefits, potentially important categories of cost identified for which no quantitative data are available include the cost of maintaining Web site accessibility, reallocating resources used to create Web pages to ensuring regulatory compliance, and possible impacts on Web site innovation options.

We note that the Air Transport Association (ATA) reported significantly higher estimated hours and overall costs for making carrier Web sites accessible in its comments on the Web site accessibility requirements proposed in the 2004 Foreign Carriers NPRM (e.g., two member carriers estimated that it would require 4,700 and 6,000 hours respectively for planning, programming, and testing to comply with the Web site requirements). In a similar vein, the Interactive Travel Services Association (ITSA) estimated the cost of basic Web site compliance with the Section 508 standard to be \$200,000–\$300,000 per company with millions more in ongoing maintenance costs. There are several factors accounting for the differences between our current cost estimates and the earlier estimates of both ATA and ITSA. The number of hours needed to comply depends on the size, type of programming, and current accessibility of a carrier's Web site. Carrier and travel agent Web sites vary significantly with respect to these factors, particularly Web site size and current level of accessibility. We believe very few carriers, if any, would need up to 6,000 hours to comply with the proposed accessibility standards; the vast majority would be able to achieve fully accessible Web sites within the number of hours we've estimated above. Another key factor driving the difference in estimated costs for both initial compliance and maintenance is

that the programming tools available in Web design software were far less sophisticated in 2004 than today. For example, Cascading Style Sheets (CSS), which make maintenance and updating of Web pages far easier and less time-consuming, were just beginning to be used in 2004 and now are nearly universal. Building accessibility into new Web pages today is estimated to add only about 3–6 percent to the cost, making the ongoing costs for maintaining an accessible Web site significantly less than for achieving initial compliance. Yet another factor in the cost difference is that the section 508 accessibility standard we proposed in 2004 was not as widely used in the private sector, nor as well supported as WCAG 2.0, which today is widely recognized as a more robust, more current, better-supported, and more easily implemented standard.

In light of the above, the Department seeks input from the public on the following questions. Do any carriers currently have Web sites that conform to the WCAG 2.0 standard? If so, what was the cost the carriers incurred in bringing their Web site into conformance with this standard? Is there agreement or disagreement with the Department's cost per site estimate? If not, what is an accurate estimate and on what specific component costs is the estimate based? What is a reasonable estimate of the time required to make embedded content (such as PDFs and multimedia) accessible? Does the initial cost of creating accessible Web content differ in any significant way from non-accessible Web content? Do the maintenance costs of an accessible Web site differ in any significant way from those of an inaccessible Web site once the conversion is completed? What would be the cost and technical difficulty associated with conforming mobile Web content to the WCAG 2.0 accessibility standard or any other accessibility standard? How much time is needed to make an existing mobile Web site or primary Web site entirely accessible? What is the cost impact of disclosing Web-based fare discounts and other Web-based amenities to passengers with disabilities who indicate they are unable to use a carrier's Web site due to their disability and who inquire about air transportation with the carrier using another means? Are there any unintended impacts, positive or negative, that could result from requiring carrier and ticket agent Web sites to be accessible?

Implementation Approach and Time Frame—The Department seeks comment on alternative time frames and approaches for implementation of Web

site accessibility requirements. We are proposing a three-phase approach that attempts to expedite accessibility of Web pages on a Web site based on when individual Web pages were created as well as the relative importance of the information or service (functionality) carriers make available for air travelers. For the initial phase, we propose to require that a carrier's new or completely redesigned primary Web site be accessible if placed online 180 or more days after the effective date of the final rule. By one year after the final rule's effective date, we propose to require Web pages associated with booking or changing a reservation, flight check-in, and accessing a personal travel itinerary, frequent flyer account, flight status or schedules, and carrier contact information to be conformant either on a primary Web site or by providing an accessible link from the associated pages on a primary Web site to corresponding conformant pages on a mobile Web site. All covered Web pages on a carrier's primary Web site would have to be conformant by two years from the final rule's effective date. We believe a gradual phasing in, deferring the most extensive Web site conversion tasks until last, will make the cost burden more manageable. Is the reservation booking mechanism more difficult to render accessible than other Web site functions? Is one year a reasonable time frame for making this function accessible? Is it feasible to require that just the booking function be made accessible within 180 days of the rule's effective date? Is a two-year time frame sufficient to render all public-facing content on a carrier's main Web site accessible? In its ANPRM on Web site accessibility for entities covered by the ADA, DOJ sought comment on compliance time frames based on when the Web sites or individual Web pages were created and on the feasibility of achieving compliance for new pages on existing Web sites. For newly created or completely redesigned Web pages—or all new Web sites (*i.e.*, those placed online for the first time), DOJ asked about requiring compliance starting six months after the publication of the final rule. Recognizing that completely new or redesigned Web sites and pages can more easily be made fully accessible than new pages on existing Web sites where certain features such as navigation components cannot be changed or replaced without redesigning the entire Web site, DOJ asked whether requiring compliance to the maximum extent feasible for new pages on existing Web sites (which may result in pages that are not completely

accessible) would be the appropriate standard. Finally, considering that existing Web sites may have hundreds to thousands of pages to be made accessible, DOJ also asked whether it would be reasonable to apply the Web site accessibility requirements to existing Web sites or pages effective two years after the date of publication of the final rule. See 75 FR 43460, 43466 (July 26, 2010). DOT requests comment on the approach we are proposing in this rulemaking for a three-phase implementation timeframe based on whether the Web page or site is new, which is similar to DOJ's approach, and the relative importance of the information or service (functionality) carriers make available for air travelers on existing Web sites. We also solicit comment on the approach DOJ proposed in its ANPRM which is based primarily on when Web sites/Web pages were created and the feasibility of compliance for new pages on existing Web sites, as well as any other approach for determining the time frame that should be adopted for carriers and ticket agents to bring their Web sites into compliance. Should the time frames for implementing the phased Web site accessibility requirements be expanded (*e.g.*, 12 months for the first phase, 18 months for the second phase and 30 months for the third phase)?

Identifying Accessible Web Pages on Partially Accessible Web Sites—Should the Department require carriers to ensure that accessible Web pages can be readily identified as such by people with disabilities (*e.g.*, contain a tag readable by screen reader software)? If flight-related functions that must be accessible 180 days or one year after the rule's effective date cannot be accessed from a carrier's inaccessible home page, are alternative means for accessing those functions (*e.g.*, through a Google search) acceptable until the carrier's entire Web site is accessible?

Compliance Verification and Web Site Usability—Can the available protocols and procedures for testing Web content conformance with WCAG 2.0 be implemented cost effectively by carriers? The Department believes that requiring carriers to post and maintain WCAG 2.0 conformance claims on their Web sites may be too costly given the size, complexity, and dynamic nature of many carrier Web sites. We are seeking comment on alternative means to readily identify a Web site's conformance with applicable accessibility requirements. What methods might DOT use to ensure/verify compliance with the applicable standards? Should the Department initiate random "spot" investigations of

carrier and online ticket agency Web sites to monitor compliance after the rule becomes effective? Are there any specific technical barriers to maintaining air carrier Web site accessibility after full Web site compliance is initially achieved?

Among the issues raised by NFB in the aforementioned June 29 meeting with the Department was the need for accessibility training for airline employees involved in programming, coding, or editing a carrier's Web site so that the underlying goals of technical accessibility requirements are well understood by those who develop and maintain the carriers' Web sites. Should the Department require carriers to develop guidance manuals for such personnel on how to implement technical accessibility standards so that their Web sites are also functionally usable by individuals with disabilities (*i.e.*, they are able to access or acquire the same information, engage in the same interactions, and enjoy the same products and services as non-disabled users of their Web site with substantially equivalent ease of use)?

Ensuring Ticket Agents Meet Web Site Accessibility and Service Obligations—The Department seeks public comment on the specific methods carriers might use to ensure that their ticket agents marketing air transportation to the general public in the U.S. are complying with both the requirements to make the Web pages on their Web sites related to covered air transportation accessible and to provide Web-based discounts and amenities to individuals who are unable to use their Web sites due to a disability. With respect to ensuring Web site accessibility, should we require carriers to notify their agents that their Web sites must be in compliance with WCAG 2.0 by two years after the rule's effective date? Would such notification to agents be sufficient, or should we require carriers to obtain certification from their agents by two years after the rule's effective date that their Web sites are compliant? Should we permit carriers to rely solely on their agents' certifications of Web site compliance, or should we also require carriers to monitor their agents' Web sites once or twice a year? What about simply requiring carriers to bring any inaccessible agent Web sites that they become aware of to the attention of the those agents, and if the agent does not respond, bring those agent Web sites to the Department's attention? What would be the costs associated with any of the approaches discussed above?

Regarding accessible agent Web sites that cannot be used by certain individuals due to a disability or

inaccessible Web sites of small ticket agents, should the Department require carriers to notify agents of their obligations to provide Web-based discounts and amenities as of the rule's effective date to individuals who cannot use an agent's Web site? Should the Department require that carriers verify their agents' compliance with these obligations through test calls or some other method? Would it be sufficient to allow carriers to rely on a written statement from their agents certifying that as of a certain date the agent provides these services? Should we require carriers to monitor complaints against ticket agents alleging that an agent refused to provide these services to consumers who could not access its Web site due to a disability? What would be the costs associated with any of these approaches? Are there any other methods of monitoring/ensuring ticket agents' Web sites are accessible and discounted fares are available to individuals who can't use the ticket agent's Web site because of a disability that we should consider?

Other Issues—Should the Department require carriers and ticket agents to provide a mechanism for passengers to provide online notification of their requests for disability accommodation services (*e.g.*, enplaning/deplaning assistance, deaf/hard of hearing communication assistance, escort to service animal relief area, *etc.*)?

2. Automated Airport Kiosk Accessibility

Most airlines today are using automated kiosks at airports to perform customer service functions such as automated flight check-in and printing of boarding passes. The speed and efficiency of automated airport kiosks make them the check-in option of choice for many air travelers. Participants in the Airline IT Trends Survey 2009 reported that over half of all travellers use an automated airport kiosk to check-in, making it the primary means for passenger processing at 29% of airports. By 2012, automated airport kiosks are expected to be the primary passenger check-in method at more than 75% of airports. Of 116 carriers (both U.S. and foreign) responding to the 2009 Airline IT Trends Survey, 60% had automated check-in kiosks at airports and 86% planned to have them by the end of 2012. See SITA, Airports Council International, & Airline Business, (June 2009). The Airport IT Trends Survey 2009 Executive Summary. *SITA and Airline Business Magazine*. Retrieved February 11, 2011, from <http://www.sita.aero/content/airport-it-trends-survey-2009>.

Increasingly, carriers are implementing kiosk technology for other customer service functions at airports such as bag tag printing, rebooking passengers from cancelled flights, and reporting lost luggage, resulting in significant cost savings. But the trend has bypassed a significant number of passengers with visual and mobility impairments for whom automated airport kiosks remain largely inaccessible. While Part 382 currently requires carriers to provide equivalent service to passengers with disabilities when automated airport kiosks are inaccessible, such service typically involves assistance from carrier personnel in operating the kiosk or permitting a passenger to move to the first class ticket counter line. Many passengers with disabilities consider these solutions inadequate because they do not allow for independent access and call attention to a passenger's disability. Indeed, advocacy organizations for individuals with visual disabilities have initiated lawsuits against carriers and an airport for failure to provide accessible automated airport kiosks. In addition, the trend in the air travel industry toward self-service and technology-driven service models has continued to grow rapidly since the 2008 final rule was issued.

The 2004 Foreign Carriers NPRM: The Department sought comment on whether automated kiosks operated by carriers in airports or other locations (*e.g.*, for ticketing and dispensing of boarding passes) are sufficiently accessible to people with vision and mobility impairments, whether the final rule should mandate specific accessibility requirements, and if so, what accessibility standards should apply. The Department asked specifically if it should adopt the Section 508 standard for self-contained closed products (36 CFR 1194.25) by reference for electronic kiosks, but did not propose any rule text.

The Comments: Comments from disability community representatives were universally supportive of requiring automated airport kiosks to be accessible for people with visual and mobility impairments. Some disability commenters urged that accessibility be required for those with hearing, cognitive, and dexterity disabilities. A number of large disability advocacy organizations strongly supported applying the standards in section 707 of the ADA and ABA Accessibility Guidelines of 2004 for automated transaction machines (ATM) and fare machines, as well as the Section 508 requirements for self-contained closed

products, to both built-in and freestanding automated airport kiosks.

The public comments did not, however, provide any specific technical or cost information on which to determine the feasibility of imposing accessibility requirements for automated airport kiosks. The Air Transport Association (ATA) opposed including any accessibility requirements for automated airport kiosks in the final rule, asserting that the technology was still maturing and adopting standards at that stage would be inappropriate. In ATA's view, a kiosk should be considered accessible as long as airline personnel are available to assist passengers with a disability in accomplishing kiosk ticketing and check-in processes. A number of carriers emphasized the cost burden of retrofitting automated airport kiosks for accessibility, including increased airport facilities charges due to expansion of the automated kiosk footprint. IATA cited not only the prohibitive cost of adapting existing automated kiosks, but also the complications arising from shared ownership of automated kiosks by airlines, airport operators, and even government entities at foreign airports and the difficulty of allocating the costs of adapting such kiosks when not all of the kiosk owners must comply with Part 382. Some individual foreign carriers pointed out their inability to control the operation and use of automated airport kiosks through contractual provisions at foreign airports where kiosks are provided by airport operators.

The Decision in the 2008 Final Rule: We determined that we did not have sufficient information to accurately estimate the cost and technical impact of imposing accessibility standards on automated airport kiosks and concluded that new requirements for kiosk accessibility were not appropriate at that time. As an interim measure, we did require carriers whose automated airport kiosks are not accessible to provide equivalent service to passengers with disabilities who cannot use the kiosks and announced our intention to seek further comment about kiosk accessibility in an SNPRM.

The Proposed Rule: The Department believes that accessibility for people with disabilities cannot be viewed as a dispensable design feature. Increasingly, the business community also is recognizing the importance of accessibility as a baseline technology design factor to support expansion of customer bases and market shares. IBM, a leading manufacturer of kiosks and other self-service applications, has developed an automated airport kiosk

equipped with an industry standard audio connector, accessible hardware controls, and text-to-speech output. The model was tested by dozens of people with vision and mobility impairments who were able to complete the check-in process with an unprecedented level of independence. In this SNPRM, we propose to amend section 382.57 to require U.S. and foreign air carriers at every U.S. airport with 10,000 or more enplanements per year where they own, lease, or control automated kiosks providing flight-related services to their customers (e.g., ticket purchase, seat selection, issuance of boarding passes, bag tags, etc.) to ensure that all new kiosk orders initiated 60 days after the rule's effective date are for accessible units. This means that carriers would be required to ensure that all new automated kiosk orders initiated 60 days after the effective date of the final rule, including those to be installed at new locations and those replacing existing automated kiosks taken out of service in the normal course of operations (e.g., due to end of life cycle, a general equipment upgrade, a terminal renovation, etc.), are for models that meet the technical accessibility criteria set forth in this proposal.

Research conducted in conjunction with the regulatory evaluation for this SNPRM indicates that the average life cycle for airport kiosks is five years.⁵ The National Federation of the Blind (NFB) indicated in a meeting with the Department on June 29, 2011, that a major U.S. airline disclosed to them that the average life cycle of its automated airport kiosks is seven to ten years. The same carrier also disclosed that automated airport kiosks may have various components replaced or upgraded (e.g., printer, motherboard) during the life cycle before the equipment is taken out of service. Assuming a longer functional life cycle for automated airport kiosks, NFB recommended that the Department consider requiring carriers to retrofit some portion of their kiosk fleet at each airport location to meet any proposed accessibility standards. At the same time, we are aware that retrofitting existing kiosks to meet accessibility standards would involve not only hardware modifications but also updated carrier software applications that may not be operable on older kiosk

machines. In light of the variations in the life cycle estimates and the software issues, the Department is considering requiring either retrofitting or replacement of a certain percentage or number of airport kiosks (e.g., retrofit 25% of existing kiosks or retrofit at least one kiosk at each airport location by a certain date). Given the estimated five-to ten-year life cycle of automated airport kiosks, we are concerned that our proposal may take too long for accessible kiosks to be available to individuals with disabilities. We are seeking additional information from the public on the accuracy of our assumption about the life cycle of automated airport kiosks and to determine the ability of the manufacturing sector to meet the demand for accessible automated airport kiosks. Such information will enable us to determine the appropriate timeframe for achieving accessibility of all automated airport kiosks. Although we are not proposing to require retrofitting or replacement of existing kiosks at this time, if the average life cycle for automated airport kiosks is seven to ten years, the transition time to achieve accessibility of all such kiosks at each airport location could be more than a decade. In such a situation, should the Department require carriers to retrofit or replace a certain portion of their kiosk fleet to meet the accessibility standards during the interim period until 100% of all automated airport kiosks are accessible?

Despite the advantages of the various incremental approaches we considered, there were difficulties with any proposed requirement that would result in less than 100% accessible automated kiosks at an airport. For example, if we required only 25% of a carrier's automated kiosks in an airport location to be accessible, would we also need to require that the carrier give priority access to any individual who needs an accessible kiosk? If the accessible automated airport kiosks at an airport location are used by all passengers, the wait time for passengers who need an accessible automated kiosk may end up being significantly longer than the wait for non-disabled passengers who can use any available automated kiosk at that location. At the same time, any mandate to reserve accessible automated kiosks at an airport location exclusively for passengers who need an accessible kiosk carries the potential of segregating and stigmatizing such passengers. In terms of independent use, passengers with visual impairments would still need assistance from carrier personnel in identifying an accessible model at

⁵ U.S. Department of Homeland Security, U.S. Visitor and Immigrant Status Indicator and Technology (US-VISIT) Program, *Air/Sea Biometric Exit Project Regulatory Impact Analysis*, Washington, DC: U.S. Department of Homeland Security, U.S. VISIT Program, 2008. <http://airlineinfo.com/dhs/pdf/3.pdf> (accessed May 27, 2011.)

airport locations where the carrier owned, leased, or controlled both accessible and inaccessible automated kiosks. Since these outcomes would undermine some of the benefits we are seeking to achieve, we view our best alternative as requiring that all new automated airport kiosks ordered after a certain date be accessible so that eventually 100% of kiosks at all airport locations will be accessible. We nonetheless seek public comment on the need to require that all new automated airport kiosks be accessible, and on any alternative approaches we should consider in addition to those discussed above (e.g., requiring only 25% of a carrier's automated kiosks in an airport location to be accessible).

As mentioned above, while we are not requiring any retrofitting of existing kiosks, we are cognizant of the market impact of a requirement that would create a significant demand for a product that may not yet be widely available. We have posed a number of questions for public comment related to these potential impacts in the next section.

Until all automated kiosks in an airport location are accessible, we are also proposing to require carriers to ensure that each accessible automated kiosk they own, lease, or control at an airport location is visually and tactilely identifiable as such to users (e.g., a raised international symbol of accessibility affixed to the front of the device) and is maintained in proper working condition. These requirements will no longer be applicable when 100% of the automated kiosks in an airport location are accessible, since it will not be necessary for automated kiosks to be identifiable as accessible to users, and carriers will have a business incentive to maintain their automated kiosks in working condition throughout the airport. During the transition to accessible kiosks, carriers would continue to be responsible to provide equivalent service as is required under the current rule (e.g., by assistance from carrier personnel in using the kiosk or allowing the passenger to come to the front of the line at the check-in counter) to any passenger who cannot use a carrier's inaccessible automated kiosk at an airport location where the carrier has not yet installed an accessible kiosk. We also propose to require that carriers provide equivalent service during and after the transition is complete to passengers who cannot readily use an accessible automated airport kiosk due to his or her disability (e.g., passenger is unable to reach the function keys on an automated kiosk that meets the accessible reach range requirement).

The Department is aware that not all automated kiosks at airports are owned by carriers and that some number of them are shared-use automated kiosks, owned, leased, or controlled jointly with the airport authority or other carriers. Our intention is that the same technical specifications and similar implementation requirements apply to shared-use automated airport kiosks. Carriers that jointly own, lease, or control shared-use automated kiosks with the airport operator at a U.S. airport with 10,000 or more enplanements per year would be required to enter into and implement a written, signed agreement with the operator by 60 days after the effective date of the final rule. The agreement must allocate responsibility among the parties for ensuring that all new orders for shared-use automated airport kiosks initiated 60 days after the effective date of the final rule, including replacements for older installed models, meet the technical accessibility criteria set forth in this proposal. The agreement would also have to spell out the respective responsibilities of the parties for ensuring that the accessible shared-use automated airport kiosks are maintained in proper working condition until all shared-use automated kiosks at each airport location are accessible. The Department's intention is to hold carriers and U.S. airport operators jointly and severally responsible for the timely and complete implementation of the agreement provisions.

We are proposing to apply parallel requirements to U.S. airport operators receiving Federal financial assistance that jointly own, lease, or control shared-use automated airport kiosks with carriers by amending our regulation implementing section 504 of the Rehabilitation Act of 1973 in 49 CFR part 27. Provisions nearly identical to those we propose to apply under 14 CFR 382.57 to carriers that jointly own, lease, or control shared-use automated kiosks with airport operators would also apply to those operators under proposed sections 49 CFR 27.71(j) and (k). The provisions applying to the carriers and the airport operators respectively would become effective at the same time to avoid any delays in implementing accessible shared-use automated kiosks. We estimate that under these proposed requirements travelers with disabilities will check-in using an accessible kiosk more than 12.4 million times in the first 10 years after the effective date of the rule, resulting in time savings to them and reduced labor costs to airlines having a total monetized value of nearly \$123 million.

Since carriers and airport operators that own, lease, or control shared-use automated airport kiosks must comply with the applicable requirements under Part 382 and Part 27, respectively, the burden will be on them both to ensure that any outside vendors with whom they have contracts to supply shared-use automated airport kiosks provide accessible models in accordance with the rule's provisions.

Currently there is no ACAA-derived accessibility standard that applies to automated airport kiosks owned, leased, or controlled by carriers. Accessibility standards for ATMs and fare vending machines (Section 707 of the 2010 ADA Standards), which were adopted as part of the Department of Justice's Americans with Disabilities Act (ADA) title II and III regulations (28 CFR Parts 35 and 36) in September 2010, do not cover automated airport kiosks. The Section 508 standard for self-contained, closed products (36 CFR 1194.25) adopted by the Access Board requires electronic information products used in or provided to the public by the Federal sector to be accessible, but also does not cover automated airport kiosks.

In addition to proposing changes to the Section 508 standards and section 255 guidelines for electronic and information technology on Web site accessibility, the ANPRM issued by the Access Board in March 2010, proposed to revise its ADA Accessibility Guidelines (ADAAG) to address, among other things, accessibility of self-service machines (kiosks) used for ticketing, check-in or check-out, seat selection, or boarding passes. See 75 FR 13457 (March 22, 2010). The comment period closed on June 21, 2010; however, further revisions to the ADAAG are not expected to become final for several years and will not become enforceable thereafter until adopted by DOT and DOJ. In July 2010, DOJ also published an ANPRM seeking comment on revisions to the Americans with Disabilities Act (ADA) regulations to ensure, among other things, the accessibility of electronic and information technology equipment and furniture such as kiosks, interactive transaction machines, point of sale devices and ATMs. See 75 FR 43452 (July 26, 2010). The ANPRM comment period closed on January 24, 2011, but a final rule amending the DOJ regulations is unlikely to become effective for some time. The DOJ ADA rules would have some application to automated airport kiosks, (e.g., shared-use automated kiosks owned, leased, or controlled by publicly operated airports).

Given the agencies' separate rulemaking activities concerning self-service transaction machines, the Access Board, the Department of Justice, and the Department of Transportation formed an informal interagency working group and began collaborating in 2010 on the appropriate accessibility criteria for such machines generally, regardless of the type of services and information they are designed to provide to users. The accessibility standard proposed in this SNPRM for automated airport kiosks is based on DOJ's 2010 ADA Standards applicable to ATMs and fare machines (section 707 of the 2010 ADA Standards) and on selected provisions from the current Section 508 standard for self-contained closed products (36 CFR 1194.25). Collectively, these technical criteria address accessibility for individuals with visual, mobility, tactile, and hearing disabilities. For purposes of this SNPRM, proposed section 382.57(a) indicates how these common technical criteria generally apply in the airport environment. The accessibility standard in this proposed rule is intended to apply to automated airport kiosks with respect to their physical design and the functions they perform. Some common technical criteria included in the proposed standard do not presently apply to automated airport kiosks as they are currently configured, but may apply to them at some time in the future (e.g., criteria for biometric security features, captioning of multi-media content). We intend that those technical criteria addressing the accessibility of functions not currently available on automated airport kiosks will not apply until those functions are available on kiosks in the future.

Request for Public Comment: The Department is seeking public comment on the following questions concerning factors affecting the costs and benefits of the proposed requirements.

Applicability—The requirements for accessible automated airport kiosks are proposed to apply only at U.S. airports with 10,000 or more enplanements per year. To the extent that kiosks located at hotel lobbies and other non-airport venues in the U.S. are owned, leased, or controlled by carriers, DOT has authority under the ACAA to require the carriers to ensure that such kiosks be accessible. The Department recognizes that such venues may also be places of public accommodation to which DOJ regulations under title III of the Americans with Disabilities Act (ADA) apply. As such, title III entities would have to ensure that self-service transaction machines located in their facilities (e.g., ATMs, information

kiosks, airline check-in kiosks) also meet any technical and scoping requirements applicable under the ADA. (The 2010 DOJ ADA standards for new ATMs and fare machines become effective on March 15, 2012, and standards applicable to other self-service transaction machines used in programs and services provided by public entities and public accommodations are being addressed in a DOJ rulemaking now in progress.) In instances where airline kiosks are located in the facility of a title III entity, the airline and title III entity would have to comply respectively with the ACAA rules applicable to automated kiosks and the DOJ ADA standards applicable to self-service transaction machines. In light of the overlapping scope of the ACAA and the ADA rules, should automated kiosks that are owned, leased, or controlled by carriers and perform functions similar to airport kiosks, but are located in non-airport venues (e.g., hotel lobbies), be covered in this rulemaking?

Effective Date—Should the proposed time frame for accessible kiosks (i.e., kiosks ordered 60 days after the effective date of the rule) be reduced or increased assuming the rule is effective 30 days after publication in the **Federal Register**? Is it reasonable to require that all new kiosk orders initiated after the effective date of the rule be for accessible models? Should there be a delay in the effective date of this provision? If so, what is a reasonable amount of time to delay the effective date of this provision? Should the effective date for carriers to enter into and implement agreements with airport operators concerning the provision and maintenance of accessible shared-use automated airport kiosks be more than 60 days after the final rule's effective date? If so, what is a reasonable time to enter into such agreements and commence implementation?

Alternatives—Should less than 100% of new automated airport kiosks ordered after the effective date of the rule be required to be accessible? If so, what is a reasonable percentage to be accessible at each airport location? If only some kiosks are accessible at each location, how would carriers ensure that the accessible kiosks are available to passengers with disabilities when needed? Would a phasing in period over 10 years, gradually increasing the percentage of automated airport kiosks required to be accessible, meaningfully reduce the costs of implementing this requirement (e.g., 25% of new automated kiosks must be accessible within 3 years of the rule's effective

date, 50% within 5 years, 75% within 7 years and 100% within 10 years)?

Should existing automated airport kiosks be required to be retrofitted? What percentage or number of existing kiosks should we require to be retrofitted? How much time should be provided to carriers/airports to retrofit existing automated airport kiosks? What about automated airport kiosks currently in use that have inactive accessibility features (e.g., equipped with headset jack but lacks internal software to use this accessibility feature)? Should airlines be required to activate any dormant accessibility features on existing automated airport kiosks immediately upon the effective date of the rule or does the activation of such features require extensive programming? What would be the cost of activating dormant accessibility features on existing automated airport kiosks? What alternative requirements for automated airport kiosk accessibility might be proposed and what would be the associated benefits and costs for each?

Costs and Benefits—Our preliminary regulatory evaluation estimates the net benefits of time saved by air travelers with disabilities and reduced labor costs to carriers from adoption of the proposed automated airport kiosk accessibility requirements at \$70.4 million at the 7 percent discount rate and \$86.2 million at the 3 percent discount rate over the entire 10-year analysis period. This estimate assumes that an average of 1.2 million travelers with disabilities would be able to use accessible kiosks in each of the first 10 years after the effective date of the rule (more than 12.4 million total), with a five-year phase-in period as accessible kiosks installations gradually increase.

Quantitative estimates of the benefits to air travelers with disabilities who can use accessible automated kiosks were developed for the evaluation based on an average reduction of 13 minutes in check-in waiting times. The value of time saved using an accessible kiosk by a traveler with a disability was calculated by multiplying this average amount of time saved by the standard value of time for air travel passengers specified in the applicable FAA guidance (\$28.60 per hour). See "Preliminary Regulatory Analysis: ACAA SNPRM Accessible Kiosks and Web Sites," July 29, 2011, p. 27.

The preliminary regulatory analysis also assumes that carriers will experience a reduction in per-person check-in costs, as more persons with disabilities use accessible kiosks instead of requiring check-in assistance from agents. The value of the reduced

assistance costs benefits were calculated using the average carrier savings per passenger when using an automated airport kiosk to check-in instead of going to the counter (estimated at \$3.70 per transaction in a recent trade publication), multiplied by the number of passengers with disabilities who are projected to use accessible kiosks. See "Preliminary Regulatory Analysis: ACAA SNPRM Accessible Kiosks and Web Sites," July 29, 2011, p. 27.

Information obtained from kiosks vendors indicates that the bulk of the incremental costs associated with making kiosk hardware, middleware, and software applications accessible are fixed, therefore they do not vary appreciably with the number of units sold. The preliminary regulatory analysis estimates that these modifications would add \$750 to the cost of each new kiosk installed at a new location or replacing an existing older model, with the variable costs for kiosk hardware modifications (e.g., keypads, audio output jacks) representing no more than 10 to 20 percent of this amount. Total compliance costs were estimated at \$21,375,000 based on a \$750 cost increase per accessible unit and the number of newly added and replacement kiosks (28,500) projected to be installed during the 10-year analysis period. See "Preliminary Regulatory Analysis: ACAA SNPRM Accessible Kiosks and Web Sites," July 29, 2011, p. 30-31. Costs associated with the kiosk accessibility requirements are not expected to accrue until six months after the effective date of the rule when the initial deliveries of accessible kiosks ordered 60 days after the rule's effective date would take place.

In light of the above, the Department seeks additional information and comment from the public in response to the following questions. What would be the average amount of time a passenger with a disability would save by using an accessible automated airport kiosk? Would the amount of time saved vary by airport and what airport-specific factors could affect the amount of time saved? What would be the estimated impact on average wait times for an accessible automated kiosk at airport locations where only 25% are accessible as compared to locations where 100% are accessible? Would the wait time for a passenger with a disability to use an accessible automated kiosk be less if such passengers were given priority access to such kiosks in airport locations where less than 100% of the automated kiosks are accessible? If such passengers are not given priority access to accessible automated kiosks, how

much longer would their wait time be versus non-disabled passengers who can use any available machine? What factors have the greatest impact on wait time for an automated airport kiosk (e.g., number of flights scheduled for departure, distance of the flight, destination of the flight, time between scheduled departures, number of passengers per flight, etc.)?

What percentage of persons with a disability who cannot use an inaccessible automated airport kiosk would use an accessible one if available? Do passengers with disabilities prefer to check-in online at home to using an automated airport check-in kiosk? Is there a quantifiable benefit associated with reduced risk in having to provide sensitive personal information to strangers in order to receive assistance at an inaccessible kiosk? Is there a quantifiable benefit associated with reduced risk of legal action related to kiosk inaccessibility?

What cost savings can be expected from the reduction in resources carriers will have to allocate to provide equivalent alternative service to passengers with disabilities who cannot use a carrier's inaccessible kiosk at an airport location (e.g., assisting passengers at the ticket counter or at an inaccessible kiosk versus directing passengers to the carrier's accessible automated kiosk at that airport location)? What is the cost impact of requiring carriers to provide equivalent service to passengers who cannot use an accessible kiosk due to their disability at airport locations where all automated kiosks are accessible?

Would a requirement for accessible automated airport kiosks have a significant impact on the cost, inventory, or delivery of such kiosks, and if so, for how long? Can manufacturers of accessible automated airport kiosks meet the market demand if 100% of new kiosks ordered starting 60 days after the final rule's effective date be accessible? If not, up to what percentage of new automated airport kiosks could the Department require to be accessible (e.g., 50% or 75%) before the demand would exceed what the manufacturers could meet? How often are automated airport kiosks replaced typically? How many manufacturers currently make automated airport kiosks? How many manufacturers currently make accessible automated airport kiosks? How many manufacturers that make inaccessible automated airport kiosks are capable of making an accessible model? How much lead-time does a company that manufactures inaccessible automated airport kiosks need to develop and start

manufacturing an accessible model as proposed in this SNPRM? What is the size of companies that manufacture automated airport kiosks? How many manufacturers of automated airport kiosks are small businesses? Do these smaller companies manufacture products other than automated airport kiosks? Do smaller companies have the capital and technology available to make accessible automated airport kiosks? Would smaller companies be able to handle the market demand for accessible automated airport kiosks resulting from this rule or might cost or other reasons delay the manufacturing technology for such kiosks causing these companies to be pushed out of the market? What is the cost difference between manufacturing a new automated airport kiosk that meets accessibility standards and one that does not? What is the cost of retrofitting an existing kiosk to meet accessibility standards versus manufacturing a new accessible kiosk? What are the costs of developing accessible carrier software applications that are capable of running on proprietary or shared-use kiosks that have accessible hardware features?

Are there significantly greater quantitative and qualitative benefits and lower costs associated with requiring carriers to ensure that only 50% versus 100% of the automated airport kiosks are accessible? Do airlines anticipate an increase in the number of automated airport kiosks used for check-in and other services? If so, what would be the percentage of increase in the number of automated airport kiosks and what additional types of services are anticipated and over what period of time?

Shared-Use Automated Airport Kiosks—As discussed above, automated airport kiosks used by carriers may be either proprietary or shared-use. Is the term "shared-use automated airport kiosk" adequately described in the rule text? What are the most common kiosk ownership arrangements at airports? What is the current number of automated check-in kiosks that are proprietary, that are jointly owned, leased, or controlled with airports, and that are jointly owned, leased, or controlled by carriers only? Who typically is responsible for the purchase, operation, and maintenance of shared-use automated kiosks at airports? What are the procurement and maintenance costs incurred by carriers for proprietary automated airport kiosks? What are the procurement and maintenance costs incurred by carriers that provide the shared-use automated kiosk hardware at an airport? What are the procurement and maintenance costs incurred by

carriers that collaborate with shared-use automated airport kiosks using compatible software and data sets? What are the procurement and maintenance costs incurred by airports for shared-use automated kiosks? Carriers and airport operators would be jointly and severally responsible for ensuring that new orders for automated shared-use kiosks initiated 60 days after the rule's effective date are for accessible units and that the automated kiosks are maintained in proper working condition. Are there potential difficulties associated with meeting this requirement given that responsibility for the hardware and middleware components of shared-use automated kiosks generally falls to airports and the responsibility for compatible software applications and data sets to carriers? If a single carrier is the provider of shared-use automated kiosks at a given airport, is a written agreement needed between the provider carrier and the collaborating carriers concerning the accessibility and maintenance of the kiosks? If so, would additional time be needed after the rule's effective date for carriers to enter into such a written agreement? We understand that some shared-use automated airport kiosks are owned neither by the airport nor a carrier, but by an outside service provider. It is our intention that carriers and airports ensure that their orders initiated 60 days after the effective date of the rule for automated airport kiosks to be supplied by such service providers are for accessible models.

Technical Criteria—As discussed above, the proposed accessibility standard for automated airport kiosks is based on the technical specifications in Section 707 of the 2010 ADA Standards that apply to fare machines and ATMs. It also includes certain specifications from the Section 508 standard for self-contained closed products (36 CFR 1194.25). We propose to apply this accessibility standard to automated airport kiosks with respect to their physical design and the functions they perform. Is the term "automated airport kiosk" adequately described in the rule text? What functions other than those described in the rule text and the preamble are presently performed by automated airport kiosks? Are there any other accessible features not covered by the proposed standard that should be included?

1. Use of Assistive Technology

The standard would require that automated airport kiosks be accessible to those with visual impairments without attaching assistive technologies other than a personal headset or audio

loop. A telephone handset or an industry standard connector would be provided so that users with visual impairments can attach personal headsets or use a handset to listen to the speech output during a transaction while maintaining their privacy. What are the costs associated with providing a handset or industry standard connector on the kiosk? Is technology available that would allow people with disabilities to use wireless technology such as mobile phones and Bluetooth at an automated airport kiosk in lieu of requiring the kiosk itself to have a handset or headset connector? If so, should we require that automated airport kiosks use such technology?

2. Operable Parts

We propose to require that the operable parts on new automated airport kiosks be tactilely discernable by users to avoid unintentional activation and request comment regarding the cost of meeting the requirement. This specification is based on the current Section 508 standard 36 CFR 1194.25(c) and 1123.23(k). We are also proposing that where a timed response is required, the automated airport kiosks alert the user by sound or touch and give the user an opportunity to indicate that more time is needed. We ask for comment on whether timeouts present barriers to using automated airport kiosks and on the cost or potential difficulties associated with meeting this requirement.

3. Outputs

Speech outputs will be required to be coordinated with the information on the visual display so that users with low vision or cognitive disabilities may benefit from using the display along with the speech. Regarding the exceptions and the advisory listed under proposed section 382.57(c)(5)(i)(2) "Receipts, Tickets, and Transaction Outputs," are there any other types of information that should be required on the printed output other than the types listed in the advisory or that may be excluded from the required printed output listed in the exceptions? Should speech output be required through either a handset, standard connector headset, or an audio loop? Are considerations for speech output other than those defined in proposed section 382.57(c)(5)(i) needed? What about requiring volume control for the automated airport kiosk's speaker only, without requiring any other mode of voice output? What about privacy concerns under such an arrangement? What are the costs/benefits of requiring

a speaker only, without handset and headset output capabilities?

4. Volume Control

If both volume control and the ability to use a personal audio loop are mandated accessibility features, can the same industry-standard connector be used for both speech navigation and the automated airport kiosk's audio output? If so, how would users select the function that meets their particular disability-related needs? Would volume controls similar to those provided in speech-enabled ATMs be useful in the airport environment? Should the dB amplification gain associated with the volume control for private listening be specified? Is incremental volume control up to an output amplification of at least 65 dB sufficient for voice output in public areas? When ambient noise at the airport is above 45 dB, is a selectable volume gain up to 20 dB sufficient? Should the same decibel gains apply to outputs delivered both in public areas and through assistive listening headsets or should different amplification gains apply to each output type? If volume control is required, are the specified dB gains appropriate to address the needs of individuals who are hard of hearing? See proposed section 382.57(c)(5)(ii)(2).

5. Captioning

For automated airport kiosks having certain multi-media content, captioning would be required. See (c)(5)(iii). This proposed requirement is based on the Section 508 standard for video and multi-media products. See 36 CFR 1194.24(c).

6. Input Controls

Software applications are now available to give individuals who are blind access to touch screen-based technology, including entering and reviewing text via a touch screen. As a result, certain touch screen devices (e.g., recent versions of Apple's iPhone, iPod Touch, and iPad; mobile devices with Google's Android platform; etc.) are becoming very popular with consumers who are blind. These devices are equipped with a screen-reading technology that uses built-in voiceover software and a touch-sensitive track pad to give the user a spoken description of what is on the display screen as he/she drags a finger over the track pad. The location of a verbal descriptor on the track pad corresponds to its location on the display screen. Should the requirement that input controls be tactilely discernable be revised to allow for input methods similar to the Apple devices? Are most users who are blind or who have low vision familiar with

how to use such touch screens? Proposed section 382.57 (c)(6)(ii) specifies an arrangement of the numeric keypad which typically is provided at ATMs. How should symbols be indicated on a numeric input keypad? Automated airport kiosks generally provide a touch screen keyboard or sometimes a physical alphabetic keyboard. When either a virtual alphabetic or a physical keyboard is provided, should the arrangement of the keys be specified? Are the function keys specified in proposed section 382.57 (c)(6)(iii) sufficient to address the types of functions typically available on automated airport kiosks? Besides the keypad functions and corresponding tactile symbols indicated in proposed section 382.57 (c)(6)(iii)(2), what other function keys are needed and what tactile symbols should identify them? Should the status of all locking or toggle controls be required to be visually discernable and discernable through either touch or sound?

7. Biometric Systems

Where automated airport kiosks employ biometrics as a means of user identification, we are including a requirement in proposed section 382.57 (c)(9) that at least two options using different biological characteristics be available. This will ensure that where finger print identification is used, for example, a person without arms can still use an alternate biometric method (e.g., iris scanner) provided by the kiosk. We are requesting comment on the importance of this provision and the costs associated with implementing it.

Regulatory Analysis and Notices

A. Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 12866 (Regulatory Planning and Review), and DOT Regulatory Policies and Procedures

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget in accordance with Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review) and is consistent with the requirements in both orders. Among other things, Executive Order 13563 directs agencies to use the best possible techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by

law, agencies may consider values that are difficult or impossible to quantify, including equity, human dignity, and fairness. In developing this proposed rule, the Department has sought to use the best possible techniques to quantify the benefits and costs.

We have produced a preliminary regulatory evaluation addressing the economic impact the proposed requirements in this SNPRM would impose on U.S. and foreign air carriers covered by the ACAA rule, as well as on their agents. We recognize that compliance with the accessibility standards for Web sites and automated airport kiosks set forth in this SNPRM will incur both implementation and ongoing operational costs, as well as potentially lead to the expanded customer bases and reduced customer service personnel costs for carriers. Our preliminary regulatory evaluation estimates benefits and costs over the 10-year period starting 6 months after the effective date of the rule, because no Web site benefits (and no kiosk benefits or costs) will accrue until 6 months after the effective date of the rule. Some carriers may need to incur costs to comply with the proposed Web sites accessibility requirements starting as early as 6 months before the 10-year analysis period begins. These "Year 0" compliance costs have been included in the 10-year estimates of benefits and costs.

We estimate the expected present value (PV) of the benefits of the proposed automated airport kiosk accessibility requirements at \$86.2 million over the 10-year analysis period, using a 7 percent discount rate and \$104.8 million, using a 3 percent rate. The expected PV of compliance costs incurred by carriers and airports over the same period to meet these proposed requirements is \$15.8 million, discounted at 7 percent and \$18.6 million, discounted at 3 percent. The expected PV of net benefits for these proposed requirements over the 10-year analysis period, therefore, is estimated at \$70.4 million using the 7 percent discount rate and \$86.2 million using a 3 percent discount rate.

With respect to the proposed requirements to ensure air travel Web site accessibility, our preliminary regulatory evaluation estimates the expected PV of the benefits at \$122.1 million over the 10-year analysis period, discounted at 7 percent and \$147.3 million, discounted at 3 percent. The expected PV of costs incurred by carriers and airports to comply with these proposed requirements over the same period is estimated to be \$66.8 million, discounted at 7 percent and

\$72.6 million, discounted at 3 percent. The expected PV of net benefits to accrue from the proposed Web site accessibility requirements over the 10-year analysis period, therefore, is estimated at \$55.3 million, using a 7 percent discount rate and \$74.7 million, using a 3 percent discount rate.

We believe this rule would have important benefits in support of values that are difficult to monetize or quantify, including independence and promoting a more inclusive society. We have carefully considered these values in developing this SNPRM. The benefits we seek to achieve include greater access for individuals with disabilities to conveniences and services offered to the general public that currently either are not available to them or are not independently accessible by them. The value of time spent comfortably using accessible Web sites and automated airport kiosks, as well as the value of avoiding time spent struggling with or seeking assistance in using inaccessible technologies, are benefits in addition to the conventional measurement of time saved by the use of accessible technologies. (Lewis, D., & Suen, S. L., & Federing, D. (2010). Countering the economic threat to sustainable accessibility. Paper presented at the 12th International Conference on mobility and transport for elderly and disabled persons (TRANSED 2010) held in Hong Kong on 2-4 June 2010.) This rulemaking affirms the human dignity of individuals with disabilities by affording them greater independence overall in accessing air travel. In keeping with the guidelines in Executive Order 12866 as amended, we believe that enhanced independence is a viable consideration in assessing the benefits of these proposed measures. We further believe that these measures requiring Web site and automated airport kiosk accessibility may eventually lead to the permanent removal of existing access barriers for people with disabilities to use these services and eliminate the costs associated with providing alternative forms of assistance to compensate for the widespread inaccessibility of these technologies. These are important factors to consider in estimating the benefits we expect would be achieved by ensuring that airline Web sites and automated kiosks at airports conform to the applicable accessibility standards. The Department seeks comment on the Preliminary Regulatory Evaluation, its approach, and the accuracy of its estimates of costs and benefits. A copy of the Preliminary Regulatory

Evaluation has been placed in the docket.

B. Executive Order 13132 (Federalism)

This Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. It does not propose any regulation that imposes substantial direct compliance costs on State and local governments. It does not propose any regulation that preempts state law, because states are already preempted from regulating in this area under the ACAA and the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because none of the proposals on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. The regulatory initiatives discussed in this SNPRM would have some impact on small carriers and some indirect impact on small ticket agents. However, based on our small entity economic evaluation, I certify that they would not have a significant economic impact on a substantial number of small entities. We invite comment to facilitate our assessment of the potential impact of these initiatives on small entities.

This SNPRM would require small U.S. carriers that own, lease, or operate proprietary or shared-use automated kiosks at U.S. airports with 10,000 or more annual enplanements to begin ordering and installing accessible models when adding or replacing

automated kiosks in the normal course of business operations. The same requirement would apply to operators of airports with 10,000 or more annual enplanements that own, lease, or operate shared-use automated kiosks. Based on our preliminary research, however, it appears that no small airports or small U.S. carriers own, lease, or operate shared-use automated kiosks, and that no small U.S. carriers own, lease, or operate proprietary automated airport kiosks at covered U.S. airports. At this time, therefore, it appears that neither small airports nor small carriers would incur any costs associated with the kiosk requirements. We are seeking public comment on these findings.

There are 50 U.S. carriers meeting the DOT definition of "small carrier" that would have to comply with the proposed Web site accessibility requirements at a cost of \$37,800 to \$61,200 over the two-year implementation period, depending on the number of pages on the site. The annual revenues for these carriers appear to range from \$10 million to over \$100 million, indicating that the cost impact on small carriers would not be significant. Although the proposal would not require small ticket agents that sell air transportation to ensure that their Web sites are accessible, it would require carriers to ensure that their agents that are small business entities provide Web-based fares and other Web-based amenities to passengers who self-identify as being unable to use the agents' Web sites due to a disability. Carriers already must provide this service to passengers who cannot use their Web sites due to a disability under the current rule, but they would be required to ensure that their agents that are small business entities do so for the first time under the proposed rule. We anticipate that there will be some indirect compliance costs on 1,704 small travel agencies and 384 small tour operators that have Web sites with online booking capability, and on as many as 9,921 small travel agencies and 2,336 small tour operators without online sales capability that will have to make any discounted fares advertised on their Web sites and any other amenities that may be offered on these Web sites available upon request to passengers who are unable to use the agents' Web sites due to their disabilities. Our research indicates that about 90% of these small entities employ less than ten people, and 80% employ less than five. Given that the requirement would rely largely on existing employee skills to find and

book Web-based discount fares and amenities, and considering the small number of employees in the majority of these businesses, we believe the economic impact on most covered entities to implement the requirements would not be significant. We also request public comment on the cost impact of this proposed requirement.

E. Paperwork Reduction Act

This SNPRM proposes a new collection of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 49 U.S.C. 3501 *et seq.*). Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to the Office of Management and Budget (OMB) for approval, it must publish a document in the *Federal Register* providing notice of and a 60-day comment period on the proposed collection of information. This SNPRM proposes to require airlines and U.S. airport operators to enter into agreements outlining their joint responsibilities for implementing the accessibility requirements for shared-use automated kiosks. These agreements will help ensure that the accessibility requirements for shared-use automated airport kiosks are effectively implemented by the parties at each U.S. airport and provide information to assist the Department in assessing carrier compliance with these requirements. The Department intends to publish a separate notice in the *Federal Register* inviting OMB, the general public, and other Federal agencies to comment on this new information collection requirement. As prescribed by the PRA, the requirements will not go into effect until OMB has approved them and the Department has published a notice announcing the effective date of the information collection requirement.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995, which does not apply to nondiscrimination civil rights requirements, do not apply to this proposed rule.

List of Subjects

14 CFR Part 382

Air carriers, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

49 CFR Part 27

Airports, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

Issued this 15th day of September, 2011, at Washington, DC.

Raymond H. LaHood,
Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR part 382 and 49 CFR part 27 as follows:

TITLE 14—AERONAUTICS AND SPACE

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

1. The authority citation for Part 382 continues to read as follows:

Authority: 49 U.S.C. 41702, 41705, 41712, and 41310.

2. Section 382.3 is amended by adding definitions for “automated airport kiosk”, “flight-related services” and “shared-use automated airport kiosk” in alphabetical order to read as follows:

§ 382.3 What do the terms in this rule mean?

* * * * *

Automated airport kiosk means a self-service transaction machine that a carrier owns, leases, or controls and makes available at a U.S. airport to enable customers to independently obtain flight-related services.

* * * * *

Flight-related services mean functions related to air travel including, but not limited to, ticket purchase, rebooking cancelled flights, seat selection, and obtaining boarding passes or bag tags.

* * * * *

Shared-use automated airport kiosk means a self-service transaction machine provided by an airport, a carrier, or an independent service provider with which any carrier having a compliant data set can collaborate to enable its customers to independently access the flight-related services it offers.

* * * * *

§ 382.31 [Amended]

3. Section 382.31(c) is removed.
4. Section 382.43 is amended by revising the section heading and adding paragraphs (c) through (f) to read as follows:

§ 382.43 Must information and reservation services of carriers be accessible to individuals with visual, hearing, and other disabilities?

* * * * *

(c) As a U.S. or foreign carrier that owns or controls a primary Web site that markets air transportation, you must ensure the public-facing Web pages on

your Web site are accessible to individuals with disabilities in accordance with this section. As a foreign carrier, only Web pages on your Web site involved in marketing covered air transportation to the general public in the U.S. must be accessible to individuals with disabilities. Covered Web pages and Web sites must conform to all Level A and Level AA Success Criteria and all Conformance Requirements from the World Wide Web Consortium (W3C) Recommendation 11 December 2008, Web site Content Accessibility Guidelines (WCAG) 2.0, as specified in paragraphs (c)(1) through (c)(3) of this section:

(1) A new or completely redesigned primary Web site placed online on or after [insert date 180 days from the effective date of the final rule] shall be conformant. A complete redesign means technical changes affecting a substantial portion of the site such as its visual design (the site’s “look and feel”), upgrading the site to ensure its overall compliance with technical standards, or reorganizing the site’s information architecture. Updating the information content of one or more Web pages alone would not constitute a Web site redesign.

(2) Web pages on an existing Web site associated with obtaining the following services and information shall either be directly conformant on your primary Web site or have accessible links from the non-conforming pages on your primary Web site to corresponding pages on your mobile Web site that are conformant by [insert date one year from the effective date of the final rule]:
(i) Booking or changing a reservation;
(ii) Checking-in for a flight;
(iii) Accessing a personal travel itinerary;
(iv) Accessing the status of a flight;
(v) Accessing a personal frequent flyer account;
(vi) Accessing flight schedules; and
(vii) Accessing carrier contact information.

(3) All covered Web pages on your primary Web site, including those made conformant during the second phase by a link to a conformant page on your mobile Web site, shall be conformant by [insert date two years from the effective date of this rule].

(d) As a carrier, when marketing your airline tickets on the Web site of a ticket agent whose annual receipts exceed the maximum established in 13 CFR 121.201, you must ensure that the Web pages on which such tickets are marketed conform to all WCAG 2.0 Level A and Level AA Success Criteria and all Conformance Requirements by

[insert date two years from the effective date of the final rule]. You are not required to apply this requirement with respect to ticket agents whose annual receipts do not exceed the maximum established in 13 CFR 121.201; however, you must ensure that Web-based fare discounts and other Web-based amenities provided to customers by such agents on your behalf are made available to a person with a disability who indicates that he or she cannot use the agents’ Web sites and who purchases a ticket using another method.

(e) As a carrier, until your Web sites are fully accessible in accordance with the requirements of this section, you must assist a prospective passenger who contacts you through another channel (e.g., telephone or walk-in) and indicates that he or she is unable to use your inaccessible Web site due to a disability as follows:

(1) Disclose Web-based discount fares, if his or her itinerary qualifies for the discounted fare.

(2) Waive any applicable fee to make a reservation or purchase a ticket using a method other than your Web site (e.g., by phone).

(f) As a carrier, you must assist a prospective passenger who indicates that he or she is unable to use your accessible Web site due to a disability and contacts you through another channel (e.g., telephone or walk-in) in accordance with paragraphs (e)(1) and (e)(2) of this section.

5. Section 382.57 is revised to read as follows:

§ 382.57 What accessibility requirements apply to automated airport kiosks?

(a) As a carrier, you must ensure that the requirements set forth below are followed for any automated airport kiosk you own, lease, or control for which an order is initiated after [insert date 60 days after the effective date of the rule] for installation at a U.S. airport with 10,000 or more enplanements per year.

(1) You shall ensure that all new orders for automated airport kiosks are for models that meet the design specifications set forth in paragraph (c) of this section. You are not required to retrofit existing kiosks.

(2) Until all automated airport kiosks you own, lease, or control at an airport location meet the design specifications in paragraph (c) of this section, you must ensure that each such kiosk you order is:

(i) Visually and tactilely identifiable to users as accessible (e.g., a raised ADA-compliant international symbol of

accessibility affixed to the front of the device).

(ii) Maintained in proper working condition.

(b) As a carrier, you must ensure that the requirements set forth below are followed for any shared-use automated airport kiosk you jointly own, lease, or control with the airport operator for which an order is initiated after [insert date 60 days after the effective date of the rule] for installation at a U.S. airport with 10,000 or more enplanements per year.

(1) By [insert 60 days after the effective date of the rule], you must have a written, signed agreement with the airport operator allocating responsibility for ensuring that the shared-use automated airport kiosks meet the design specifications set forth in paragraph (c) in accordance with the requirements of paragraphs (b)(2) through (3) of this section. Carriers and airport operators are jointly and severally responsible for the timely and complete implementation of the agreement provisions.

(2) You shall ensure that all new orders for shared-use automated airport kiosks are for models that meet the design specifications set forth in paragraph (c) of this section. You are not required to retrofit existing kiosks.

(3) Until all shared-use automated airport kiosks meet the design specifications in paragraph (c) of this section, you must ensure that each such kiosk you order is:

(i) Visually and tactilely identifiable to users as accessible (e.g., a raised ADA-compliant international symbol of accessibility affixed to the front of the device).

(ii) Maintained in proper working condition.

(c) You must ensure that the automated airport kiosks provided in accordance with this section conform to the following technical accessibility standards with respect to their physical design and the functions they perform:

(1) Self Contained. Except for personal headsets and audio loops, automated kiosks shall be operable without requiring the user to attach assistive technology.

(2) Clear Floor or Ground Space. A clear floor or ground space complying with *36 CFR Part 1191, appendix D*, section 305 of the U.S. Department of Justice's 2010 ADA Standards for Accessible Design shall be provided.

(3) Operable Parts. Operable parts shall comply with subsection (c)(3) and *36 CFR Part 1191, appendix D*, section 309 of the 2010 ADA Standards.

(i) Identification. Operable parts shall be tactilely discernible without activation.

(ii) Timing. Where a timed response is required, the user shall be alerted by touch or sound and shall be given the opportunity to indicate that more time is required.

(iii) Status Indicators. Status indicators, including all locking or toggle controls or keys, shall be discernible either through touch or sound.

(iv) Color. Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(4) Privacy. Automated airport kiosks shall provide the opportunity for the same degree of privacy of input and output available to all individuals.

(5) Output. Automated airport kiosks shall comply with this paragraph (c)(5).

(i) Speech Enabled.

(A) Automated airport kiosks shall be speech enabled. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all displayed information for full use shall be accessible to and independently usable by individuals with vision impairments. Speech shall be delivered through a mechanism that is readily available to all users, including but not limited to, an industry standard connector or a telephone handset. Speech shall be recorded or digitized human, or synthesized. Speech shall be coordinated with information displayed on the screen.

(B) Audible tones shall be permitted instead of speech for visible output that is not displayed for security purposes, including but not limited to, asterisks representing personal identification numbers.

(C) Advertisements and other similar information shall not be required to be audible unless they convey information that can be used in the transaction being conducted.

(D) Speech for any single function shall be automatically interrupted when a transaction is selected. Speech shall be capable of being repeated and paused.

(E) Where receipts, tickets, or other outputs are provided as a result of a transaction, speech output shall include all information necessary to complete or verify the transaction, except that:

(1) Automated airport kiosk location, date and time of transaction, customer account numbers, and the kiosk identifier shall not be required to be audible.

(2) Information that duplicates information available on-screen and

already presented audibly shall not be required to be repeated.

(3) Printed copies of a carrier's contract of carriage, applicable fare rules, itineraries and other similar supplemental information that may be included with a boarding pass shall not be required to be audible.

(F) The information necessary to complete or verify a transaction depends on the nature of the transaction and the automated kiosk type. Where automated kiosks provide boarding passes and other similar transactional outputs, information such as concourse, gate number, seat number, and boarding group is necessary to complete and verify a transaction.

(G) Receipts, tickets, and similar transactional output usually are printed, but this is not always the case. For example, a boarding pass might be transferred to a smart phone or personal digital assistant. Regardless of the delivery method, the automated kiosk must convey to the user the information provided in receipts, tickets and other similar transactional outputs that is necessary to complete and verify a transaction.

(ii) Volume Control. Automated kiosks shall provide volume control complying with paragraphs (c)(5)(ii)(A) and (B) of this section.

(A) Private Listening. Where speech required by paragraph (c)(5)(i) of this section is delivered through a mechanism for private listening, the automated kiosk shall provide a means for controlling the volume.

(B) Speaker Volume. Where sound is delivered through speakers on the automated kiosk, incremental volume control shall be provided with output amplification up to a level of at least 65 dB SPL. Where the ambient noise level of the environment is above 45 dB SPL, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(iii) Captioning. Multimedia content that contains speech or other audio information necessary for the comprehension of the content shall be open or closed captioned.

Advertisements and other similar information shall not be required to be captioned unless they convey information that can be used in the transaction being conducted.

(iv) Tickets and Boarding Passes. Where tickets or boarding passes are provided, tickets and boarding passes shall have an orientation that is tactilely discernible if orientation is important to further use of the ticket or boarding pass.

(6) Input. Input devices shall comply with paragraphs (c)(6)(i) through (c)(6)(iii) of this section.

(i) Input Controls. At least one tactilely discernible input control shall be provided for each function. Where provided, key surfaces not on active areas of display screens shall be raised above surrounding surfaces. Where touch or membrane keys are the only method of input, each shall be tactilely discernible from surrounding surfaces and adjacent keys.

(ii) Numeric Keys. Numeric keys shall be arranged in a 12-key ascending or descending telephone keypad layout. The number five key shall be tactilely distinct from the other keys.

(iii) Function Keys. Function keys shall comply with paragraphs (c)(6)(ii)(A) and (B) of this section.

(A) Contrast. Function keys shall contrast visually from background surfaces. Characters and symbols on key surfaces shall contrast visually from key surfaces. Visual contrast shall be either light-on-dark or dark-on-light. However, tactile symbols required by paragraph (c)(6)(iii)(B) shall not be required to comply with paragraph (c)(6)(iii)(A) of this section.

(B) Tactile Symbols. Function key surfaces shall have tactile symbols as follows: Enter or Proceed key: raised circle; Clear or Correct key: raised left arrow; Cancel key: raised letter ex; Add Value key: raised plus sign; Decrease Value key: raised minus sign.

(7) Display Screen. The display screen shall comply with paragraphs (c)(7)(i) and (c)(7)(ii) of this section.

(i) Visibility. The display screen shall be visible from a point located 40 inches (1015 mm) above the center of the clear floor space in front of the automated kiosk.

(ii) Characters. Characters displayed on the screen shall be in a sans serif font. Characters shall be 3/16 inch (4.8 mm) high minimum based on the uppercase letter "I." Characters shall contrast with their background with either light characters on a dark background or dark characters on a light background.

(8) Braille Instructions. Braille instructions for initiating the speech mode shall be provided. Braille shall comply with 36 CFR part 1191, appendix D, section 703.3 of the 2010 ADA Standards.

(9) Biometrics. Biometrics shall not be the only means for user identification or control, except that where at least two biometric options that use different biological characteristics are provided, automated kiosks shall be permitted to use biometrics as the only means for user identification or control.

(d) Until you have met the requirements of paragraphs (a) or (b), and (c) of this section, you must provide equivalent service upon request to passengers with a disability who cannot readily use your automated airport kiosks (e.g., by directing a passenger who is blind to an accessible automated kiosk, assisting a passenger in using an inaccessible automated kiosk, or allowing the passenger to come to the front of the line at the check-in counter).

(e) You must provide appropriate equivalent service as described in paragraph (d) of this section upon request to any passenger, who due to his or her disability, cannot readily use an accessible automated kiosk that you own, lease, or control at a U.S. airport.

TITLE 49—TRANSPORTATION

PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

6. The authority citation for Part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310(a) and (f)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

7. Section 27.71 is amended by adding paragraphs (j) and (k) as follows:

§ 27.71 Airport facilities.

* * * * *

(j) *Shared-use automated airport kiosks.* This paragraph (j) applies to U.S. airports with 10,000 or more annual enplanements.

(1) With respect to shared-use automated airport kiosks that are jointly owned, leased, or controlled with carriers, the airport operator must ensure that all automated kiosks installed at each airport location are accessible to passengers with disabilities by following the design specifications set forth in paragraph (k) of this section.

(2) No later than [insert date 60 days after the effective date of the rule], the airport operator shall have a written, signed agreement with the carriers at that airport that are subject to 14 CFR 382.57(b) allocating responsibility for ensuring that shared-use automated kiosks meet the design specifications set forth in paragraph (k) in accordance with the requirements of paragraphs (k)(1), (3), and (4) of this section.

(i) The agreements must ensure that accessible shared-use automated airport kiosks are maintained in proper working

condition until all automated kiosks installed at each airport location are accessible to passengers with disabilities.

(ii) Airport operators and carriers are jointly and severally responsible for the timely and complete implementation of the agreement provisions.

(3) Airport operators that jointly own, lease, or control automated airport kiosks with carriers shall ensure that all new orders for shared-use automated kiosks initiated [insert date 60 days after the effective date of the rule] meet the design specifications set forth in paragraph (k) of this section. There is no requirement to retrofit existing kiosks.

(4) Until all automated airport kiosks meet the design specifications in paragraph (k), each shared-use automated kiosk that meets the design specifications in paragraph (k) of this section shall be visually and tactilely identifiable to users as accessible (e.g., a raised ADA-compliant international symbol of accessibility affixed to the front of the device).

(k) *Technical standards for shared-use automated kiosks.* Shared-use automated airport kiosks provided in accordance with paragraph (j) of this section must conform to the following technical accessibility standards with respect to their physical design and the functions they perform:

(1) Self Contained. Except for personal headsets and audio loops, automated kiosks shall be operable without requiring the user to attach assistive technology.

(2) Clear Floor or Ground Space. A clear floor or ground space complying with 36 CFR Part 1191, appendix D, section 305 of the U.S. Department of Justice's 2010 ADA Standards for Accessible Design shall be provided.

(3) Operable Parts. Operable parts shall comply with subsection (c)(3) and 36 CFR Part 1191, appendix D, section 309 of the 2010 ADA Standards.

(i) Identification. Operable parts shall be tactilely discernible without activation.

(ii) Timing. Where a timed response is required, the user shall be alerted by touch or sound and shall be given the opportunity to indicate that more time is required.

(iii) Status Indicators. Status indicators, including all locking or toggle controls or keys, shall be discernible either through touch or sound.

(iv) Color. Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(4) Privacy. Automated airport kiosks shall provide the opportunity for the same degree of privacy of input and output available to all individuals.

(5) Output. Automated airport kiosks shall comply with this paragraph (k)(5).

(i) Speech Enabled.

(A) Automated airport kiosks shall be speech enabled. Operating instructions and orientation, visible transaction prompts, user input verification, error messages, and all displayed information for full use shall be accessible to and independently usable by individuals with vision impairments. Speech shall be delivered through a mechanism that is readily available to all users, including but not limited to, an industry standard connector or a telephone handset. Speech shall be recorded or digitized human, or synthesized. Speech shall be coordinated with information displayed on the screen.

(B) Audible tones shall be permitted instead of speech for visible output that is not displayed for security purposes, including but not limited to, asterisks representing personal identification numbers.

(C) Advertisements and other similar information shall not be required to be audible unless they convey information that can be used in the transaction being conducted.

(D) Speech for any single function shall be automatically interrupted when a transaction is selected. Speech shall be capable of being repeated and paused.

(E) Where receipts, tickets, or other outputs are provided as a result of a transaction, speech output shall include all information necessary to complete or verify the transaction, except that:

(1) Automated airport kiosk location, date and time of transaction, customer account numbers, and the kiosk identifier shall not be required to be audible.

(2) Information that duplicates information available on-screen and already presented audibly shall not be required to be repeated.

(3) Printed copies of a carrier's contract of carriage, applicable fare rules, itineraries and other similar supplemental information that may be included with a boarding pass shall not be required to be audible.

(F) The information necessary to complete or verify a transaction depends on the nature of the transaction and the automated kiosk type. Where automated kiosks provide boarding passes and other similar transactional outputs, information such as concourse, gate number, seat number, and boarding group is necessary to complete and verify a transaction.

(G) Receipts, tickets, and similar transactional output usually are printed, but this is not always the case. For example, a boarding pass might be transferred to a smart phone or personal digital assistant. Regardless of the delivery method, the automated kiosk must convey to the user the information provided in receipts, tickets and other similar transactional outputs that is necessary to complete and verify a transaction.

(ii) Volume Control. Automated kiosks shall provide volume control complying with paragraphs (k)(5)(ii)(A) and (B) of this section.

(A) Private Listening. Where speech required by paragraph (k)(5)(i) of this section is delivered through a mechanism for private listening, the automated kiosk shall provide a means for controlling the volume.

(B) Speaker Volume. Where sound is delivered through speakers on the automated kiosk, incremental volume control shall be provided with output amplification up to a level of at least 65 dB SPL. Where the ambient noise level of the environment is above 45 dB SPL, a volume gain of at least 20 dB above the ambient level shall be user selectable. A function shall be provided to automatically reset the volume to the default level after every use.

(iii) Captioning. Multimedia content that contains speech or other audio information necessary for the comprehension of the content shall be open or closed captioned.

Advertisements and other similar information shall not be required to be captioned unless they convey information that can be used in the transaction being conducted.

(iv) Tickets and Boarding Passes. Where tickets or boarding passes are provided, tickets and boarding passes shall have an orientation that is tactilely discernible if orientation is important to further use of the ticket or boarding pass.

(6) Input. Input devices shall comply with paragraphs (k)(6)(i) through (k)(6)(iii) of this section.

(i) Input Controls. At least one tactilely discernible input control shall be provided for each function. Where provided, key surfaces not on active areas of display screens shall be raised above surrounding surfaces. Where touch or membrane keys are the only method of input, each shall be tactilely discernible from surrounding surfaces and adjacent keys.

(ii) Numeric Keys. Numeric keys shall be arranged in a 12-key ascending or descending telephone keypad layout. The number five key shall be tactilely distinct from the other keys.

(iii) Function Keys. Function keys shall comply with paragraphs (k)(6)(iii)(A) and (B) of this section.

(A) Contrast. Function keys shall contrast visually from background surfaces. Characters and symbols on key surfaces shall contrast visually from key surfaces. Visual contrast shall be either light-on-dark or dark-on-light. However, tactile symbols required by paragraph (k)(6)(iii)(B) shall not be required to comply with paragraph (k)(6)(iii)(A) of this section.

(B) Tactile Symbols. Function key surfaces shall have tactile symbols as follows: Enter or Proceed key: raised circle; Clear or Correct key: raised left arrow; Cancel key: raised letter ex; Add Value key: raised plus sign; Decrease Value key: raised minus sign.

(7) Display Screen. The display screen shall comply with paragraphs (k)(7)(i) and (k)(7)(ii) of this section.

(i) Visibility. The display screen shall be visible from a point located 40 inches (1015 mm) above the center of the clear floor space in front of the automated kiosk.

(ii) Characters. Characters displayed on the screen shall be in a sans serif font. Characters shall be $\frac{3}{16}$ inch (4.8 mm) high minimum based on the uppercase letter "I." Characters shall contrast with their background with either light characters on a dark background or dark characters on a light background.

(8) Braille Instructions. Braille instructions for initiating the speech mode shall be provided. Braille shall comply with *36 CFR part 1191, appendix D*, section 703.3 of the 2010 ADA Standards.

(9) Biometrics. Biometrics shall not be the only means for user identification or control, except that where at least two biometric options that use different biological characteristics are provided, automated kiosks shall be permitted to use biometrics as the only means for user identification or control.

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 300**

[REG-116284-11]

RIN 1545-BK24

User Fees Relating to the Registered Tax Return Preparer Competency Examination and Fingerprinting Participants in the Preparer Tax Identification Number, Acceptance Agent, and Authorized E-File Provider Programs**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the user fee regulations. The proposed regulations would establish a new user fee for individuals to take the registered tax return preparer competency examination and a new user fee for certain persons to be fingerprinted in conjunction with the preparer tax identification number, acceptance agent, and authorized e-file provider programs. The proposed regulations also would redesignate § 300.12, Fee for obtaining a preparer tax identification number, as § 300.13. The proposed regulations affect individuals who take the registered tax return preparer competency examination and applicants and certain participants in the preparer tax identification number, acceptance agent, or authorized e-file provider programs. The charging of user fees is authorized by the Independent Offices Appropriations Act of 1952. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 26, 2011. Outlines of topics to be discussed at the public hearing scheduled for October 7, 2011, at 10 a.m. must be received by October 4, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-116284-11), Room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-116284-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-

116284-11). The public hearing will be held in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Emily M. Lesniak at (202) 622-4570; concerning cost methodology, Eva J. Williams at (202) 435-5514; concerning submission of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Richard A. Hurst at Richard.A.Hurst@irs.counsel.treas.gov or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background and Explanation of Provisions**

In June 2009, the IRS launched a Tax Return Preparer Review with the intent to propose a comprehensive set of recommendations that would increase taxpayer compliance and ensure uniform and high ethical standards of conduct for tax return preparers. In December 2009, the IRS made findings and recommendations based upon this review that would increase oversight of the federal tax return preparer community. The findings and recommendations were published in Publication 4832, "Return Preparer Review" (the Report), which was published on January 4, 2010. In part, the Report recommended registering all tax return preparers with the IRS and requiring tax return preparers who are not attorneys, certified public accountants, or enrolled agents to pass a competency examination before they are eligible to prepare a tax return or claim for refund. The Treasury Department and the IRS have published several documents implementing the recommendations in the Report, three of which are relevant to these proposed regulations.

First, on September 30, 2010, the Treasury Department and the IRS published final regulations under I.R.C. section 6109 (75 FR 60309) providing that for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's preparer tax identification number (PTIN) or such other number prescribed by the IRS in forms, instructions, or other appropriate guidance. The section 6109 final regulations require a tax return preparer who prepares all or substantially all of a tax return or claim for refund after December 31, 2010 to have a PTIN. These regulations further provide that only attorneys, certified public accountants, enrolled agents, and registered tax return preparers are

eligible to obtain a PTIN. Section 1.6109-2(h) of the regulations states, however, that the IRS can provide exceptions to the § 1.6109-2 regulations through forms, instructions, or other appropriate guidance.

Second, on December 30, 2010, the Treasury Department and the IRS published Notice 2011-6 (2011-3 IRB 315) that, in part, creates exceptions under § 1.6109-2(h), allowing two additional classes of individuals to obtain a PTIN (provided all tax compliance and suitability checks are passed) and prepare all or substantially all of a tax return or claim for refund for compensation. Section 2a. of Notice 2011-6 permits specified individuals who are supervised by the attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the tax return or claim for refund prepared by the individual to obtain a PTIN. These supervised individuals may not sign a tax return or claim for refund. Section 2b. of Notice 2011-6 provides that individuals who certify that they do not prepare or assist in the preparation of all or substantially all of any tax return or claim for refund that is covered by a competency examination will be able to obtain a PTIN. This exception recognizes that the initial registered tax return preparer competency examination will be limited to individual income tax returns (Form 1040 series returns and accompanying schedules).

Third, on June 3, 2011, the Treasury Department and the IRS published final regulations amending the regulations governing practice before the IRS (76 FR 32286). These regulations are found in 31 CFR part 10 and have been reprinted as Treasury Department Circular No. 230 (Circular 230). The amendments to Circular 230, in part, provide that practice before the IRS includes preparing for compensation a tax return, claim for refund, or other document submitted to the IRS and include registered tax return preparers as practitioners under Circular 230. Registered tax return preparers must demonstrate the necessary qualifications and competency by passing a minimum competency examination, completing annual continuing education requirements, and complying with any other applicable procedures relating to the application for registration and renewal of registration established and published by the IRS. Registered tax return preparers may prepare and sign tax returns, claims for refund, and other documents as provided in forms, instructions, or other appropriate guidance. Registered tax return

preparers also may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS during an examination if the registered tax return preparer signed the tax return or claim for refund for the time period under examination. Registered tax return preparers may not represent taxpayers before appeals officers, revenue officers, Counsel, or similar officers or employees of the IRS or the Department of the Treasury.

User Fee To Take the Registered Tax Return Preparer Competency Examination

To become a registered tax return preparer, applicants will be required to pass a competency examination. Proposed § 300.12 establishes a \$27 user fee to take the registered tax return preparer competency examination. This user fee must be paid each time the applicant takes the competency examination and is in addition to any reasonable fee charged by the third-party vendor that is approved by the IRS. Applicants who pass the competency examination generally will not, however, be required to re-take the examination in the future years.

There are costs to the IRS for administering the registered tax return preparer competency examination. The user fee to take the registered tax return preparer competency examination will recover these costs. These costs include the personnel, administrative, management, and information technology costs to the IRS for developing and reviewing the competency examination, overseeing the competency examination, validating the competency examination results, and establishing a review procedure for applicants who contest any portion of the competency examination. The user fee also recovers the cost to conduct background checks on employees of the third-party vendor who are involved in the administration of the examination.

Individuals who pay the competency examination user fee and become registered tax return preparers will receive a special benefit from the IRS that is not received by the general public. Passing the competency examination enables registered tax return preparers to prepare and sign Form 1040 series returns (and accompanying schedules) for compensation. Registered tax return preparers also are able to represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS during examination if the registered tax return preparer signed the tax return

for the period under examination. That representation does not include practice before appeals officers, revenue officers, Counsel, or similar officers or employees of the IRS or the Department of the Treasury. Because the competency examination initially will cover only the Form 1040 series returns, only attorneys, certified public accountants, enrolled agents, or registered tax return preparers will be able to sign a Form 1040 series return. While tax return preparers who are supervised will be able to prepare all or substantially all of a Form 1040 series tax return or claim for refund, they will not be able to sign the return or claim for refund and are not able to represent the taxpayers before the IRS. Any individual with a PTIN, however, can prepare and sign a tax return or claim for refund that is not part of the Form 1040 series.

User Fee To Be Fingerprinted as Part of the PTIN, Acceptance Agent, and Authorized E-File Provider Programs

The IRS intends to collect fingerprints as part of the PTIN, acceptance agent, and authorized e-file provider programs to assist in evaluating the suitability of applicants and participants in these programs. Individuals who have been or are fingerprinted in conjunction with their participation in any one of these programs after June 8, 2009, however, will not have to be re-fingerprinted to participate in these programs.

Proposed § 300.13 establishes a \$33 user fee on individuals who will be fingerprinted in conjunction with their application to participate or participation in these programs. This user fee is in addition to any reasonable fee charged by a third-party vendor that is approved by the IRS. The third-party vendor fee will cover the costs for obtaining the fingerprints and transmitting the fingerprints to the Federal Bureau of Investigation (FBI), where the fingerprints will be run through the FBI identification records database. The IRS fingerprinting user fee recovers the costs to the IRS to transfer the fingerprints and the results of the FBI search to the IRS; perform background checks on third-party vendor employees; modify the database used to receive, record, and store the search results; evaluate the results received from the search of the FBI database; provide internal review of circumstances when an individual is determined not to be suitable to participate in a program; and process appeals by individuals who are denied the ability to participate in a program because the individual failed this suitability check.

Additionally, under the current proposed regulations any participant in the PTIN, acceptance agent, or authorized e-file provider programs who resides and is employed outside of the United States will not have to be fingerprinted to participate in these programs. Such persons, however, must comply with all other elements of the suitability check. In addition, the Treasury Department and the IRS continue to study what additional requirements should apply to such persons. Any additional requirements would be set forth in future guidance.

Individuals who are fingerprinted as part of their application or participation in the PTIN, acceptance agent, or authorized e-file provider programs receive a special benefit that is not received by the general public. Individuals who participate in the PTIN program receive the special benefit of being able to prepare all or substantially all of a tax return or claim for refund for compensation. Individuals with a PTIN can charge for their tax preparation services. The regulations under section 6109 require tax return preparers to have a PTIN if they prepare all or substantially all of a tax return or claim for refund for compensation. Passing a suitability check is a prerequisite for receiving a PTIN. For most PTIN applicants, the suitability check includes, but is not limited to, fingerprinting and processing the fingerprints through the FBI identification records database. The IRS, however, does not intend to fingerprint attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries who apply for a PTIN at this time. The Treasury Department and the IRS specifically request comments on whether these individuals should be exempt from the fingerprinting process.

Participants in the acceptance agent program, which includes certifying acceptance agents, also receive a special benefit from participation in the program. As provided in Revenue Procedure 2006-10 (2006-1 CB 293), acceptance agents facilitate and expedite the issuance of individual taxpayer identification numbers (ITINs) and employer identification number (EINs) by verifying the identity and foreign status of applicants. An individual who wants to obtain an ITIN must submit a Form W-7, "Application for IRS Individual Taxpayer Identification Number," and documentation that evidences the individual's identity and status as an alien. An EIN applicant must submit a Form SS-4, "Application for Employer Identification Number," and any

required supplementary statements. Section 301.6109-1(d)(3)(iv) provides that ITIN and EIN applicants may submit the application and accompanying information directly to the IRS or may use an acceptance agent. When a certifying acceptance agent is used to apply for an ITIN, the ITIN applicant is not required to submit documentation proving the applicant's identity or status as an alien because the certifying acceptance agent certifies to these facts. This certification procedure is not available to EIN applicants. The certification is submitted to the IRS as part of the ITIN application.

To become an acceptance agent, applicants must pass a suitability check. As part of the suitability check, most applicants will be fingerprinted for processing through the FBI identification records database. Successful applicants receive the special benefit of being able to facilitate and expedite ITIN and EIN applications and verify the applicants' identity and status as an alien. Certifying acceptance agents receive the additional benefit of being able to certify ITIN applicants' identity and status as an alien, which enables ITIN applicants to retain their identification and foreign status documentation. Acceptance agents can charge a fee for their services.

All individuals who apply to become an acceptance agent and who are required to be fingerprinted must pay the fingerprinting user fee. As of June 8, 2009, the IRS began storing the fingerprints of all acceptance agent applicants electronically. Prior to that time, the fingerprints of acceptance agent applicants generally were not stored electronically. Fingerprints that are not stored electronically deteriorate over time. The IRS, therefore, may require acceptance agents who were fingerprinted prior to June 8, 2009, and who are currently required to be fingerprinted, to be re-fingerprinted and pay the associated user fee.

All individuals who apply to become authorized e-file providers also must pass a suitability check. As part of the suitability check, most applicants will be fingerprinted for processing through the FBI identification records database. The guidelines for participation in this program are in Revenue Procedure 2007-40 (2007-1 CB 1488) and numerous publications that are tailored to specific tax or information returns. Successful applicants receive an electronic filing identification number (EFIN). Multiple persons associated with an applicant may use the same EFIN to electronically file tax and information returns. Authorized e-file providers receive the special benefit of

being able to electronically file specified tax and information returns with the IRS. Some e-file providers charge a fee for performing this service.

All individuals who apply to become an authorized e-file provider and who are required to be fingerprinted must pay the fingerprinting user fee. Additionally, similar to the process for acceptance agents described earlier in this preamble, authorized e-file providers who were fingerprinted before June 8, 2009, the date the IRS began digitally storing all fingerprints, and are required to be fingerprinted, may be re-fingerprinted and required to pay the associated user fee.

If the IRS has an individual's fingerprints digitally stored due to the individual's application to participate or participation in the PTIN, acceptance agent, or authorized e-file provider programs, the individual will not have to be fingerprinted again to participate in one of the other programs.

The IRS did not charge a user fee for acceptance agents or authorized e-file providers to be fingerprinted previously because an unduly large part of the user fee would have been the cost of collecting a user fee. With the addition of many PTIN applicants as individuals who also must be fingerprinted (the number of persons being fingerprinted will increase to approximately 460,000), the cost of collecting the user fee has decreased relative to the costs associated with fingerprinting. Because the cost of collecting a user fee is no longer an unduly large part of the user fee, the IRS has determined that a user fee is now appropriate and will charge a user fee to recover the cost of fingerprinting the applicants and certain participants in the PTIN, acceptance agent, and authorized e-file provider programs.

The proposed regulations also would redesignate § 300.12, Fee for obtaining a preparer tax identification number, as § 300.13.

Authority

The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952, which is codified at 31 U.S.C. 9701. The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are currently set forth in the Office of Management

and Budget Circular A-25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the full cost of providing the special service, unless the Office of Management and Budget grants an exception.

Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services for the registered tax return preparer competency examination and for fingerprinting applicants and certain participants in the PTIN, acceptance agent, and authorized e-file provider programs. The government will charge the full cost of administering these services and will implement the proposed user fees under the authority of the IOAA and the OMB Circular.

Proposed Effective/Applicability Date

The Administrative Procedure Act provides that substantive rules generally will not be effective until thirty days after the final regulations are published in the *Federal Register* (5 U.S.C. 553(d)). Final regulations may be effective prior to thirty days after publication if the publishing agency finds that there is good cause for an earlier effective date.

This regulation is part of the IRS's continued effort to implement the recommendations in the "Return Preparer Review." The recently published amendments to Circular 230 established registered tax return preparers as practitioners under Circular 230 and required that individuals must pass a competency examination, among other requirements, to become a registered tax return preparer. Before the competency examination can be offered, the competency examination user fee must be in place. As part of the recent amendments to the section 6109 regulations, the IRS established a requirement to pass a suitability check prior to obtaining a PTIN. To fully implement the suitability check, the regulations establishing a user fee to be fingerprinted must be finalized so the IRS can begin fingerprinting required applicants. Further, the competency examination and the fingerprinting user fees must be finalized significantly before the 2012 filing season to enable the IRS to have these aspects of the new

regulatory program in place for the 2012 filing season.

Thus, the Treasury Department and the IRS find that there is good cause for these regulations to be effective upon the publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563.

It has been determined that an initial regulatory flexibility analysis under 5 U.S.C. 603 is required for this final rule. The analysis is set forth under the heading, "Initial Regulatory Flexibility Analysis."

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency "to prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." See 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the proposed rule, if promulgated, will have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is required.

Description of the Reasons Why Action by the Agency Is Being Considered

Based upon the finding in the Report, the IRS and the Treasury Department are implementing regulatory changes that increase the oversight of the tax return preparer industry. These regulatory changes include requiring persons who prepare all or substantially all of a tax return or claim for refund for compensation to obtain a PTIN and creating a new category of Circular 230 practitioner called registered tax return preparers. Individuals who wish to become a registered tax return preparer

must pass a competency examination. Individuals who pass the competency examination and become a registered tax return preparer will receive a special benefit that the general public does not receive because a registered tax return preparer is allowed to prepare and sign Form 1040 series returns (and accompanying schedules) for compensation. Under the new PTIN and Circular 230 guidance (including Notice 2011-6), only attorneys, certified public accountants, enrolled agents, or registered tax return preparers can prepare and sign all or substantially all of a Form 1040 series return for compensation. There are costs to the IRS associated with overseeing the registered tax return preparer competency examination and providing the special benefits associated with being a registered tax return preparer. These proposed regulations implement a user fee for taking the registered tax return preparer competency examination to recover these costs.

PTIN holders, acceptance agents, and e-file providers also receive a special benefit from participation in the PTIN, acceptance agent, and authorized e-file provider programs. PTIN holders receive the special benefit of being able to prepare all or substantially all of a tax return or claim for refund for compensation. Acceptance agents receive the special benefit of being able to facilitate and expedite ITIN and EIN applications by validating the applicant's identity and status as a foreign person. Certifying acceptance agents also receive the special benefit of being able to certify an ITIN applicant's identity and status as an alien. Authorized e-file providers receive the benefit of being able to electronically file tax and information returns with the IRS. As a prerequisite for participation in these programs, applicants and certain participants must pass a suitability check. As part of the suitability check, most applicants will be fingerprinted for processing through the FBI identification record database. There are costs to the IRS to administer and review the processing of applicant's and certain participant's fingerprints as part of the suitability check. These proposed regulations implement a user fee for certain individuals to be fingerprinted as part of the PTIN, acceptance agent, or authorized e-file provider programs to recover these costs.

A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

Regarding the registered tax return preparer program, the objective of the

proposed regulations is to recover the costs to the government associated with the registered tax return preparer competency examination. This user fee will be in addition to any reasonable fee charged by the third-party vendor that is approved by the IRS for administering the competency examination. The costs to the government include the personnel, administrative, management, and information technology costs to develop and review the competency examination, oversee the competency examination, validate the competency examination results, and establish review procedures for persons who contest the competency examination. All individuals who are not attorneys, certified public accountants, or enrolled agents and want to prepare and sign Form 1040 series tax returns (and accompanying schedules) for compensation will be required to become a registered tax return preparer and pass the competency examination. Individuals who pass the competency examination and become a registered tax return preparer will receive the special benefit of being able to prepare and sign Form 1040 series returns for compensation. Registered tax return preparers also will receive the benefit of being able to represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS during examination if the registered tax return preparer signed the tax return for the period under examination. These regulations recover the costs to the government that are associated with providing this special benefit.

Regarding the fingerprinting user fee to participate in the PTIN, acceptance agent, or authorized e-file provider programs, the purpose of the user fee is to recover the costs to the government for providing the special benefits associated with these programs. This user fee will be in addition to any user fee charged by the third-party vendor, which will be approved by the IRS, and covers the costs for obtaining the fingerprints and transmitting the fingerprints to the FBI. The fingerprinting user fee recovers the costs to the IRS to transfer the fingerprints and the results of the FBI database search to the IRS; perform background checks on third-party vendor employees; modify the database used to receive, record, and store the search results; evaluate the results received from the search of the FBI database; provide internal review of circumstances where an individual is found not suitable to participate in the respective program; and process appeals

by individuals who are denied the ability to participate in their respective program because the individuals failed the suitability check. Individuals who participate in the PTIN program receive the special benefit of being able to prepare all or substantially all of a tax return or claim for refund for compensation. Individuals who participate in the acceptance agent program receive the special benefit of being able to facilitate and expedite the issuance of ITINs and EINs by verifying the applicant's identity and status as an alien; certifying acceptance agents receive the additional benefit of being able to certify an ITIN applicant's identity and status as an alien. Persons who participate in the authorized e-file provider program receive the special benefit of being able to electronically file tax and information returns.

The legal basis for establishing a user fee is contained in section 9701 of title 31.

A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed regulations affect all individuals who want to become registered tax return preparers under the new oversight rules in Circular 230. Only individuals, not businesses, can practice before the IRS or become a registered tax return preparer. Thus, the economic impact of these regulations on any small entity generally will be a result of applicants owning a small business or a small entity employing applicants. The NAICS code that relates to tax preparation services (NAICS code 541213) is the appropriate code for the registered tax return preparer program. Entities identified as tax preparation services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than \$7 million. The IRS estimates that approximately 350,000 individuals will become registered tax return preparers. The IRS estimates that approximately 70 to 80 percent of the individuals who apply to become registered tax return preparers are operating as or employed by small entities.

The proposed regulations affect certain individuals who have or want to obtain a PTIN. Only individuals, not businesses, can obtain a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to obtain a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is

required to apply for or renew a PTIN to prepare all or substantially all of a tax return or claim for refund. The appropriate NAICS codes for applicants or participants in the PTIN program who will have to be fingerprinted relates to tax preparation services (NAICS code 541213). The IRS estimates that approximately 450,000 individuals who receive a PTIN will be required to pay the fingerprinting user fee. Entities identified as tax preparation services and offices of lawyers are considered small under the Small Business Administration size standards if their annual revenue is less than \$7 million. The IRS estimates that approximately 70 to 80 percent of the individuals required to be fingerprinted are operating as or employed by small entities.

The proposed regulations also affect individuals who are or want to become an acceptance agent. Only an individual can become an acceptance agent; thus, the regulations will economically impact any small entity that is owned by or employs an acceptance agent. The NAICS code that relates to tax preparation services (NAICS code 541213) is the appropriate code for the acceptance agent program. Entities identified as tax preparation services are considered small under the Small Business Administration size standards if their annual revenue is less than \$7 million. The IRS estimates that 3,500 individuals who are not required to obtain a PTIN will be fingerprinted as part of the acceptance agent program. The IRS estimates that 80 to 90 percent of acceptance agents are operating as or employed by small entities.

Finally, the proposed regulations will affect any person that is an authorized e-file provider or applies to become an authorized e-file provider. Small businesses can be authorized e-file providers. The NAICS code that relates to authorized e-file providers is data processing, hosting, and related services (NAICS code 518210). Entities identified as data processing, hosting, and related services are considered small under the Small Business Administration size standards if their annual revenue is less than \$25 million. The IRS projects that 6,500 persons who are not required to obtain a PTIN will be fingerprinted as part of the authorized e-file provider program. The IRS estimates that 99 percent of authorized e-file providers are operating as small businesses.

A 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.

No reporting or recordkeeping requirements are projected to be associated with this proposed regulation.

An Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

The IRS is not aware of any federal rules that duplicate, overlap, or conflict with the proposed rule.

A Description of Any Significant Alternatives to the Proposed Rule, Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The IOAA authorizes the charging of user fees for agency services, subject to policies designated by the President. The OMB Circular implements presidential policies regarding user fees and encourages user fees when a government agency provides a special benefit to a member of the public. As Congress has not appropriated funds to the registered tax return preparer, PTIN, acceptance agent, or authorized e-file provider programs, there are no viable alternatives to the imposition of user fees.

While the IRS previously did not charge a user fee to recover its costs in conjunction with the fingerprinting of applicants to the acceptance agent and authorized e-file programs, the number of applicants in these programs was small enough that the cost of collecting a user fee to fingerprint applicants in these programs would represent an unduly large portion of the user fee. The addition of the PTIN applicants as a group of individuals who also are required to be fingerprinted increased the number of persons required to be fingerprinted to approximately 460,000. Because the population of individuals to be fingerprinted substantially increased, the cost of collecting a user fee for fingerprinting acceptance agents and authorized e-file providers is no longer an unduly large portion of the user fee.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will

be available for public inspection and copying.

A public hearing has been scheduled for October 7, 2011 beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by October 4, 2011. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Emily M. Lesniak, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

Part 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended by:

1. Redesignating paragraph (b)(12) as paragraph (b)(13).
2. Adding new paragraph (b)(12).
3. Adding paragraph (b)(14).

The additions and revisions read as follows:

§ 300.0 User fees; in general.

* * * * *

(b) * * *

(12) Taking the registered tax return preparer examination.

* * *

(14) Fingerprinting to apply for, or participate, in the preparer tax identification number, authorized e-file provider, or acceptance agent programs.

§ 300.12 [Redesignated as § 300.13]

Par. 3. Redesignate § 300.12 as § 300.13.

Par. 4. Add new § 300.12 to read as follows:

§ 300.12 Registered tax return preparer competency examination fee.

(a) *Applicability.* This section applies to the competency examination to become a registered tax return preparer pursuant to 31 CFR 10.4(c).

(b) *Fee.* The fee for taking the registered tax return preparer competency examination is \$27, which is the government cost for overseeing the examination and does not include any fees charged by the administrator of the examination.

(c) *Person liable for the fee.* The person liable for the competency examination fee is the applicant taking the examination.

(d) *Effective/applicability date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

Par. 5. Section 300.14 is added to read as follows:

§ 300.14 Fingerprinting fee to participate in the preparer tax identification number, acceptance agent, or authorized e-file provider programs.

(a) *Applicability.* This section applies to applicants and participants in the preparer tax identification number, acceptance agent, and authorized e-file provider programs who are required to be fingerprinted as prescribed by forms, instructions, or other appropriate guidance. This section does not apply, however, to individuals who reside and are employed outside of the United States.

(b) *Fee.* The fee to be fingerprinted is \$33, which is the cost to the government for processing the fingerprints and does not include any fees charged by the vendor.

(c) *Person liable for the fee.* The person liable for the fingerprinting fee is the person being fingerprinted.

(d) *Effective/applicability date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011-24771 Filed 9-22-11; 11:15 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0032; FRL-9471-5]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP) that was submitted by the Governor of New Mexico to EPA on December 15, 2010. The proposed SIP revision modifies Albuquerque/Bernalillo County's Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Albuquerque/Bernalillo County's PSD permitting requirements for their greenhouse gas (GHG) emissions. Due to the SIP Narrowing Rule, 75 FR 82536, starting on January 2, 2011, the approved Albuquerque/Bernalillo County SIP's PSD requirements for GHG apply at the thresholds specified in the Tailoring Rule, not at the 100 or 250 tons per year (tpy) levels otherwise provided under the Clean Air Act (CAA or Act), which would overwhelm Albuquerque/Bernalillo County's permitting resources. This rule clarifies the applicable thresholds in the Albuquerque/Bernalillo County SIP, addresses the flaw discussed in the SIP Narrowing Rule, and incorporates state rule changes adopted at the state level into the federally-approved SIP. EPA is proposing approval of the Albuquerque/Bernalillo County, New Mexico December 15, 2010 PSD SIP revision because the Agency has made the preliminary determination that this PSD SIP revision is in accordance with section 110 and part C of the Federal Clean Air Act and EPA regulations regarding PSD permitting for GHGs.

DATES: Comments must be received on or before October 26, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2011-0032, by one of the following methods:

(1) <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

(2) *E-mail*: Mr. Jeff Robinson at robinson.jeffrey@epa.gov. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U. S. EPA Region 6 "Contact Us"* Web site: <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

(4) *Fax*: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), at fax number 214-665-6762.

(5) *Mail*: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

(6) *Hand or Courier Delivery*: Mr. Jeff Robinson, Chief, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2011-0032. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA

Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals related to this SIP revision, and which are part of the EPA docket, are also available for public inspection at the Local Air Agency listed below during official business hours by appointment:

Albuquerque Environmental Health Department, Suite 3023, 3rd floor, One Civic Plaza, 400 Marquette Av. NW, Albuquerque, New Mexico, 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Miller (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-7550. Mr. Miller can also be reached via electronic mail at miller.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. Summary of Albuquerque/Bernalillo County's Submittal
- III. What is the background for today's proposed action?
- IV. What is EPA's analysis of Albuquerque/Bernalillo County's SIP revision?
- V. What action is EPA taking?
- VI. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. Summary of Albuquerque/Bernalillo County's Submittal

On December 15, 2010, the State of New Mexico submitted a SIP revision request to EPA to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Albuquerque/Bernalillo County's PSD permitting requirements for GHG emissions. The submitted revisions to the SIP are enacted at 20.11.61.7 New Mexico Air Code (NMAC). Final approval of this SIP revision request will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, ensuring that smaller GHG sources emitting less than these thresholds are not subject to permitting requirements. Pursuant to section 110 of the CAA, EPA is proposing to approve this revision into the Albuquerque/Bernalillo County SIP. New Mexico also submitted revisions to the remainder of the Albuquerque/Bernalillo County PSD program at 20.11.61.6, 20.11.61.11, 20.11.61.12, 20.11.61.20 and 20.11.61.27 NMAC that correctly update internal cross-references to the PSD definitions. EPA is also proposing approval of these revisions pursuant to section 110 of the CAA.

Also on December 15, 2010, New Mexico submitted revisions to the New Mexico General Provisions for

Albuquerque/Bernalillo County at 20.11.1 NMAC, and to the New Mexico Title V Operating Permits Program for Albuquerque/Bernalillo County at 20.11.42 NMAC. EPA will address these revisions at a later date and in a separate action on the General Provisions and the Title V Program.

III. What is the background for today's proposed action?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for today's proposed action. More detailed discussion of the background is found in the preambles for those actions. In particular, the background is contained in what we call the GHG PSD SIP Narrowing Rule,¹ and in the preambles to the actions cited therein.

A. GHG-Related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the New Mexico SIP. Four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,² the "Johnson Memo Reconsideration,"³ the "Light-Duty Vehicle Rule,"⁴ and the "Tailoring Rule."⁵ Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds

¹ "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule." 75 FR 82536 (December 30, 2010).

² "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

³ "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

⁴ "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

⁵ "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP system, and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a FIP.⁶ Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the GHG PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the "error correction" provisions of CAA section 110(k)(6).

B. Albuquerque/Bernalillo County's Actions

On July 16, 2010, the City of Albuquerque's Environmental Health Department (AEHD) provided a letter to EPA, in accordance with a request to all States from EPA in the Tailoring Rule, with confirmation that their local air board has the authority to regulate GHG in its PSD program. The letter confirmed that Albuquerque/Bernalillo County's current rules require regulating GHGs at the existing 100/250 tpy threshold, rather than at the higher thresholds set in the Tailoring Rule because Albuquerque/Bernalillo County's rules and could not be interpreted to apply the meaning of the term "subject to regulation" established in the Tailoring

⁶ Specifically, by notice dated December 13, 2010, EPA finalized a "SIP Call" that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority.

"Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," 75 FR 77698 (Dec. 13, 2010). EPA has been making findings of failure to submit for states unable to submit the required SIP revision by their deadline, and finalizing FIPs for such states. See, e.g., "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases," 75 FR 81874 (December 29, 2010); "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," 75 FR 82246 (December 30, 2010). Because New Mexico's SIP already authorizes Albuquerque/Bernalillo County to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, Albuquerque/Bernalillo County is not subject to the proposed SIP Call or FIP.

Rule. The City's AEHD also submitted a letter on September 17, 2010, in response to the proposed GHG SIP Call again confirming that EPA correctly classified Albuquerque/Bernalillo County's SIP to apply PSD requirements to GHGs and that they were pursuing revisions to their SIP to match federal requirements. See the docket for this proposed rulemaking for copies of AEHD's July 16, 2010, and September 17, 2010, letters.

In the PSD SIP Narrowing Rule, published on December 30, 2010, EPA withdrew its approval of Albuquerque/Bernalillo County's SIP—among other SIPs—to the extent that SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.⁷ As a result, the Albuquerque/Bernalillo County's current approved SIP provides the local permitting authority with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and federally requires new and modified sources to receive a PSD permit based on GHG emissions only if they emit at or above the Tailoring Rule thresholds.

Albuquerque/Bernalillo County has amended its local regulations to incorporate the Tailoring Rule thresholds for sources within Albuquerque/Bernalillo County, and has submitted the adopted regulations as revisions to their SIP. EPA's proposed approval of Albuquerque/Bernalillo County's revisions will clarify the applicable thresholds in the Albuquerque/Bernalillo County SIP.

The basis for this SIP revision is that limiting PSD applicability to GHG sources to the higher thresholds in the Tailoring Rule is consistent with the SIP provisions that provide required assurances of adequate resources, and thereby addresses the flaw in the SIP that led to the PSD SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that States provide "necessary assurances that the State * * * will have adequate personnel [and] funding * * * to carry out such [SIP]." In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources on grounds that the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,⁸ and no State, including Albuquerque/Bernalillo

⁷ "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule." 75 FR 82536 (December 30, 2010).

⁸ Tailoring Rule, 75 FR 31,517/1.

County, asserted that it did have adequate resources to do so.⁹ In the PSD SIP Narrowing Rule, EPA found that the affected states, including New Mexico and Albuquerque/Bernalillo County, had a flaw in their SIP at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.¹⁰ Accordingly, for each affected state, including New Mexico and Albuquerque/Bernalillo County, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.¹¹ EPA recommended that States adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under State law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the federally-approved SIP by clarifying that the SIP applies to only sources at or above the Tailoring Rule thresholds.¹²

IV. What is EPA's analysis of Albuquerque/Bernalillo County's SIP revision?

The regulatory revisions that Albuquerque/Bernalillo County's AEHD submitted on December 15, 2010, establish thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under its PSD program. Specifically, the submittal includes changes to Albuquerque/Bernalillo County's PSD regulations at 20.11.61.6, 20.11.61.7, 20.11.61.11, 20.11.61.12, 20.11.61.20, and 20.11.61.27 NMAC.¹³

Albuquerque/Bernalillo County has a SIP-approved PSD program, and has incorporated EPA's 2002 New Source Review (NSR) reform revisions for PSD into its SIP.¹⁴ In letters provided to EPA on June 24, 2010, and September 14, 2010, Albuquerque/Bernalillo County notified EPA of its interpretation that

the City and County have the authority to regulate GHGs under its PSD regulations. Prior to the passage of the submitted revisions, the City and County's regulations (adopted prior to the promulgation of EPA's Tailoring Rule) applied to major stationary sources having the potential to emit at least 100 tpy or 250 tpy or more of a regulated NSR pollutant, depending on the type of source, or major modifications constructing in areas designated attainment or unclassifiable with respect to the National Ambient Air Quality Standards.

The changes to Albuquerque/Bernalillo County's PSD program regulations submitted for approval here are substantively the same as the amendments to the Federal PSD regulatory provisions in EPA's Tailoring Rule. As part of its review of this submittal, EPA performed a line-by-line review of Albuquerque/Bernalillo County's revisions and has determined that they are consistent with the Tailoring Rule. EPA's Technical Support Document detailing our analysis of the revisions to the New Mexico SIP is available in the docket for this action.

V. What action is EPA taking?

EPA is proposing to approve Albuquerque/Bernalillo County's December 15, 2010, SIP submittal, relating to PSD requirements for GHG-emitting sources in Albuquerque/Bernalillo County. Specifically, the December 15, 2010, proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the determination that this SIP submittal is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

If EPA finalizes our approval of Albuquerque/Bernalillo County's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into its SIP, then paragraph (e) in Section 52.1634 of 40 CFR part 52, as included in EPA's SIP Narrowing Rule—which codifies EPA's limiting its approval of Albuquerque/Bernalillo County's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds—is no longer necessary. In today's proposed action, EPA is also proposing to amend Section 52.1634 of 40 CFR part 52 to remove this unnecessary regulatory language.

VI. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct

⁹ SIP Narrowing Rule, 75 FR 82,540/2.

¹⁰ *Id.* at 82,542/3.

¹¹ *Id.* at 82,544/1.

¹² *Id.* at 82,540/2.

¹³ On December 15, 2010, Governor Richardson also submitted revisions to the Albuquerque/Bernalillo County's Title V program and to the General Provisions portion of the SIP. EPA will take separate action on these revisions in a separate rulemaking.

¹⁴ "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Prevention of Significant Deterioration (PSD) and New Source Review" 72 FR 20728 (April 26, 2007).

costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: September 13, 2011.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2011-24696 Filed 9-23-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0100; FRL-9471-4]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Subchapter 7, Exclusion for *De Minimis* Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of Montana on June 25, 2010 and May 28, 2003. The revisions contain new and amended rules in Subchapter 7 (Permit, Construction, and Operation of Air Contaminant Sources) that pertain to the issuance of Montana air quality permits, in addition to other minor administrative changes to the Administrative Rules of Montana. The intended effect of this action is to propose to approve the rules that are approvable and to propose to disapprove the rules that are inconsistent with the Clean Air Act (CAA.) This action is being taken under section 110 and 112 of the CAA.

DATES: Comments must be received on or before October 26, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-0100, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: leone.kevin@epa.gov.
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- **Mail:** Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- **Hand Delivery:** Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2011-0100. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. General Information
- II. Background
- III. What Authorities Apply to EPA's Proposed Action
- IV. EPA's Analysis and Proposed Actions on SIP Revisions
- V. Summary of Proposed Actions
- VI. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *SIP* mean or refer to State Implementation Plan.
- (iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Background

In response to Montana legislation adopted in 1995, (House Joint Resolution No. 22, Montana's June 25, 2010 SIP Submittal Package, Tab 15, Attachment 2), on August 9, 1996, the Montana Board of Environmental Review (Board) adopted the initial *de minimis* rules, Administrative Rules of Montana (ARM) 16.8.1102, 16.8.1113 and 16.8.1121 as part of Montana's air quality preconstruction permit program rules. These rules created an exemption from the requirement to obtain an air quality permit modification for certain changes at a permitted facility that did not increase the facility's potential emissions of an air pollutant by more than 15 tons per year, when conditions specified in the rule were met. On December 9, 1996, the Board recodified its rules, including the following recodification of the *de minimis* rules: ARM 16.8.1102 became 17.8.705; 16.8.1113 became 17.8.733 and 16.8.1121 became 17.8.708. On May 14, 1999, the Board revised ARM 17.8.705 and 17.8.733 and repealed 17.8.708. The Governor of Montana submitted the Board's August 9, 1996 and May 14,

1999 rulemaking actions to EPA on August 26, 1999, for inclusion in the SIP. On December 6, 2002, the Board repealed ARM 17.8.705 and 17.8.733, which the Board incorporated into a new rule, ARM 17.8.745, the State's current *de minimis* rule. On May 28, 2003, the Governor submitted the new rule to EPA for inclusion in the SIP and rescinded the previous submissions of ARM 17.8.705 and 17.8.733.

During the State's 1996 and 1999 rulemaking process we expressed concerns with the *de minimis* level specified in the earlier versions of the regulation we are proposing action on today (see letters from EPA to the State of Montana dated July 25, 1996, April 1, 1999 and October 9, 2002 in the docket). ARM 17.8.745 created an exemption from the requirement to obtain an air quality permit or permit modification for certain changes at a permitted facility that did not increase the facility's potential emissions of an air pollutant by more than 15 tons per year, when conditions specified in the rule were met. Since this new rule reduced the stringency of the current SIP approved regulations, EPA indicated that the State must provide an analysis showing that the new rule will not interfere with compliance with the National Ambient Air Quality Standards (NAAQS) or Prevention of Significant Deterioration (PSD) increments. Section 110(l) of the CAA states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress (RFP), as defined in section 171 of the CAA, or any other applicable requirement of the CAA. Montana's May 28, 2003 submittal did not provide any analysis or demonstration that the new rule (ARM 17.8.745) meets these requirements. In EPA's final July 8, 2011 rulemaking (76 FR 40237) which approved revisions to ARM 17.8.7, no action was taken on Montana's *de minimis* provision in ARM 17.8.745. Since EPA took no action on ARM 17.8.745 in our 76 FR 40237 notice, we took no action on all references to ARM 17.8.745 in ARM 17.8.7.

On June 25, 2010, the Governor of Montana submitted the Board's May 14, 2010 rulemaking action to EPA for inclusion in the SIP. This revision request for ARM 17.8.745, which supercedes the State's May 28, 2003 submittal for ARM 17.8.745, created an exemption from the requirement to obtain an air quality permit or permit modification for certain changes at a permitted facility that did not increase the facility's potential emissions of an air pollutant by more than five tons per

year, when conditions specified in the rule were met. In this action EPA proposes to act on two submittals: (1) The May 28, 2003 SIP revision request; and (2) the June 25, 2010 SIP revision request, which amended the 2003 submittal.

The State's May 28, 2003 submittal also included ARM 17.8.743, which was a new rule. ARM 17.8.743(1) describes those sources that are required to obtain a Montana air quality permit. ARM 17.8.743(1) provides that any new or modified facility or emitting unit that has the potential to emit more than 25 tons per year of any airborne pollutant, except lead,¹ must obtain a Montana air quality permit except as provided in ARM 17.8.744 and ARM 17.8.745 before constructing, installing, modifying or operating. ARM 17.8.431(1)(b) also requires asphalt concrete plants, mineral crushers, and mineral screens that have the potential to emit more than 15 tons per year of any airborne pollutant, other than lead, to obtain a Montana air quality permit.

This notice also contains EPA's proposed action on Montana rules relating to the permitting threshold for asphalt concrete plants and mineral crushers. In our July 8, 2011 rulemaking, EPA approved of all of new section ARM 17.8.743(1), except for the phrase "asphalt concrete plants and mineral crushers" where the *de minimis* permitting threshold for those sources was changed from five tons per year to 15 tons per year. During the State's rulemaking process we expressed concerns with the new permit threshold for asphalt concrete plants and mineral crushers. (See October 9, 2002, letter from EPA to the State of Montana in the docket.) Since for asphalt concrete plants and mineral crushers this revision (ARM 17.8.743(1)(b)) reduces the stringency of the current SIP approved regulations, which has a threshold of 5 tons, we stated that Montana must provide an analysis showing that this new rule will not interfere with compliance with the NAAQS or PSD increments. Section 110(l) of the CAA states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress, as defined in Section 171 of the CAA, or any other applicable requirement of the CAA. Montana did not provide any analysis or

¹ Facilities or emitting units that emit airborne lead must obtain a Montana air quality permit if they are new and emit greater than five tons per year of airborne lead, or if they are an existing facility or emitting unit and a modification results in an increase of airborne lead by an amount greater than 0.6 tons per year.

demonstration that the increased permit threshold, from five tons per year to 15 tons per year, for asphalt concrete plants and mineral crushers meets these criteria. At the request of the State, we took no action on the phrase "asphalt concrete plants, mineral crushers" in ARM 17.8.743(1)(b) in 76 FR 40237. EPA is proposing action on the May 28, 2003, SIP revision request for 17.8.743(1)(b) in this action.

III. What Authorities Apply to EPA's Proposed Action

Section 110(l) of the CAA states: Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

The States' obligation to comply with each of the NAAQS is considered as "any applicable requirement(s) concerning attainment." A demonstration is necessary to show that this revision will not interfere with attainment or maintenance of the NAAQS, including those for ozone, particulate matter, carbon monoxide (CO), sulfur dioxide (SO₂), lead, nitrogen oxides (NO_x) or any other requirement of the Act.

The CAA at section 110(a)(2)(C) requires states to include a minor New Source Review (NSR) program in their SIP to regulate modifications and new

construction of stationary sources within the area as necessary to assure the NAAQS are achieved. EPA's implementing regulations at 40 CFR 51.160-164 are intended to ensure that new source growth is consistent with maintenance of the NAAQS and 40 CFR 51.160(e) requires states to identify types and sizes of facilities which will be subject to review under their minor NSR program. For sources identified under 40 CFR 51.160(e), section 51.160(a) requires that the SIP include legally enforceable procedures that enable a state or local agency to determine whether construction or modification of a facility, building, structure or installation, or combination of these will result in a violation of applicable portions of the control strategy; or interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state. Section 110(i) of the CAA specifically precludes states from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. See CAA section 110(l); 40 CFR 51.104.

EPA recognizes that, under the applicable Federal regulations, states have broad discretion to determine the scope of their minor NSR programs as needed to attain and maintain the NAAQS. The states have significant discretion to tailor minor NSR requirements that are consistent with

the requirements of 40 CFR part 51. States may also provide a rationale for why the rules are at least as stringent as the 40 CFR part 51 requirements where the revisions are different from those in 40 CFR part 51. For example, states may exempt from minor new source review certain categories of changes based on *de minimis* or administrative necessity grounds in accordance with the criteria set out in *Alabama Power Co. v. Costle*, 636 F.2d 323, 360-361 (D.C. Cir. 1979). *De minimis* sources are presumed not to have an impact and their emissions would not prevent or interfere with attainment of the NAAQS, even within nonattainment areas.

Since there are no ambient air quality standards for air toxics, the area's compliance with any applicable maximum achievable control technology (MACT) standards, as well as any Federal mobile source control requirements under CAA sections 112 or 202(l) would constitute an acceptable demonstration of noninterference for air toxics.

Section 110(l) does not require a demonstration of noninterference for changes to Federal requirements that are not included in the SIP. A revision to the SIP, however, cannot interfere with any federally mandated program such as a MACT standard (or related section 112 requirements) or Reid Vapor Pressure.

The following is a table of the NAAQS that were in place at the time Montana submitted its new section ARM 17.8.745 and all references to ARM 17.8.745 for Federal approval on May 23, 2003, as well as the current NAAQS levels:

Criteria pollutant	NAAQS level as of 2003	Current NAAQS level	Date of revision
Carbon Monoxide	35 ppm 1-hr Average	35 ppm 1-hr Average	August 31, 2011.
	9 ppm 8-hr Average	9 ppm 8-hr Average	
Lead	1.5 ug/m3 Quarterly Average	0.15 ug/m3 Rolling 3-month Average ..	Nov. 12, 2008.
Nitrogen Dioxide	0.53 ppm Annual Mean	0.53 ppm Annual Mean	Feb. 9, 2010.
		100 ppb 1-hour Avg	
Particulate Matter (PM ₁₀)	150 ug/m3 24-hr Avg	150 ug/m3 24-hr Avg	Oct. 17, 2006.
	50 ug/m3 Annual Mean		
Particulate Matter (PM _{2.5})	65 ug/m3 24-hr Avg	35 ug/m3 24-hr Avg	Oct. 17, 2006.
	15 ug/m3 Annual Mean	15 ug/m3 Annual Mean	
Ozone	0.12 ppm 1-hour Avg	0.075 ppm 8-hour Avg	Mar. 27, 2008.
	0.08 ppm 8-hour Avg		
Sulfur Dioxide, Primary Standard	0.14 ppm 24-hour Avg	75 ppb 1-hour Average	June 22, 2010.
	0.030 ppm Annual Mean		
Sulfur Dioxide, Secondary Standard	0.5 ppm 3-hour Avg	0.5 ppm 3-hour Avg	May 22, 1996.

For this proposal EPA is using indicators such as ambient air quality analysis, air quality trends including air monitoring and air modeling and findings from past EPA-approved rules and attainment demonstrations to show noninterference. In this proposal we are taking into consideration the nature of the permitting requirement, its potential

impact on the air quality in the area and the air quality of the area in which the permitting requirements apply.

CAA Section 193, also referred to as the "General Savings Clause" requires that "[n]o control requirement in effect or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area

which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification ensures equivalent or greater emission reduction of such air pollutant." This proposed rulemaking and associated Technical Support Document (TSD) demonstrates that the requirements of CAA Section

193 have been met through consistent emission reductions in nonattainment areas compared to the current EPA approved SIP.

IV. EPA's Analysis and Proposed Actions on SIP Revisions

In this proposed rulemaking, we are proposing to approve new section ARM 17.8.745 submitted by Montana on June 25, 2010. We are also proposing to approve all references to ARM 17.8.745, submitted by Montana on May 28, 2003. Specifically, the following phrases in 17.8.740(8)(a) and (c), respectively, (1) "except when a permit is not required under ARM 17.8.745" and (2) "except as provided in ARM 17.8.745", the phrase "and 17.8.745" in ARM 17.8.743(1) and the phrase "the emission increase meets the criteria in ARM 17.8.745 for a *de minimis* change not requiring a permit in ARM 17.8.864(1)(b). We are also proposing to disapprove the phrase "asphalt concrete plants and mineral crushers" in ARM 17.8.743(1)(b) submitted by Montana on May 28, 2003.

ARM 17.8.745

De minimis Exemptions from minor NSR. The Montana permit to construct rules exempt non-major sources from permitting requirements if they meet all of several criteria. These criteria are:

- (1) Any construction or changed conditions of operation at a facility that would violate any condition in the facility's existing Montana air quality permit or any applicable rule contained in this chapter is prohibited, except as allowed in (2);
- (2) any construction or changed conditions of operation at a facility that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;
- (3) any construction or changed conditions of operation at a facility that would affect the plume rise or dispersion characteristics of the emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air quality increment, as defined in ARM 17.8.804;
- (4) any construction or improvement project with a potential to emit more than 5 tons per year may not be artificially split into smaller projects to avoid permitting under this subchapter; and
- (5) emission reductions obtained through offsetting within a facility are not included when determining the potential emission increase from construction or changed conditions of operation, unless such reductions are made federally enforceable.

ARM 17.8.745(1)(b) states that an owner or operator shall notify the department for specific changes, with exceptions listed in ARM 17.8.745(1)(c); ARM 17.8.745(1)(d) includes the information the owner or operator must submit to the department if a notice is required under ARM 17.8.745(1)(b); ARM 17.8.745(1)(e) states that the notice requirements under ARM 17.8.745(1)(d) shall not supercede any requirements under 40 CFR parts 60, 61 or 63 (New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.)

We evaluated ARM 17.8.745 using the Federal regulations under CAA section 110(a)(2)(c) and 40 CFR 51.160, including section 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS.

We also evaluated the new rules using CAA section 110(l). Section 110(l) provides that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the CAA. Therefore, EPA will approve a SIP revision only after a state has demonstrated that such a revision will not interfere ("noninterference") with attainment of the NAAQS, Rate of Progress (ROP), RFP or any other applicable requirement of the CAA.

EPA retains the discretion to adopt approaches on a case-by-case basis to determine what the appropriate demonstration of noninterference with attainment of the NAAQS, ROP, RFP or any other applicable requirement of the CAA should entail. In this instance, EPA asked the State to submit an analysis showing that the approval of new section ARM 17.8.745 would not violate section 110(l) of the CAA (see docket number EPA-R08-OAR-2011-0100); this is also referred to as a "demonstration of noninterference" with attainment and maintenance under CAA section 110(l). In addition to the State's demonstration, EPA conducted its own analysis utilizing SIP-approved attainment plans, past rulemakings, stipulations, consent decrees, air modeling data and air monitoring data. The scope and rigor of the demonstration of noninterference conducted in this notice is appropriate given the air quality status of the State, and the potential impact of the revision on air quality and the pollutants affected.

We interpret section 110(l) to apply to all requirements of the CAA and to all

areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. The scope and rigor of an adequate section 110(l) demonstration of noninterference depends on the air quality status of the area, the potential impact of the revision on air quality, the pollutant(s) affected, and the nature of the applicable CAA requirements.

As described above, the changes to ARM 17.8.745 (the *de minimis* rule) that would occur with EPA approval of this SIP revision submittal affect the entire State of Montana for all criteria pollutants, with the exception of lead. ARM 17.8.743(1)(a) already limits a modification to an existing facility or emitting unit that results in an increase in the facility or emitting unit's potential to emit airborne lead by an amount greater than 0.6 tons per year. Therefore, EPA needs to review the effect of the exemption statewide for all criteria pollutants, except lead, before we can determine whether we can approve the SIP revisions under CAA section 110(l).

The Montana Department of Environmental Quality (MDEQ) has been implementing the *de minimis* rule for more than 13 years as a State approved rule. This State approved rule established a 15 tons per year *de minimis* threshold for requiring a Montana air quality permit when a facility is modified. As stated earlier in this notice, Montana's June 25, 2010 SIP revision request revises the federally approved SIP *de minimis* level from zero to a five tons per year threshold. MDEQ submitted a statewide demonstration of noninterference, which includes an air quality analysis, showing the effects of the *de minimis* rule on each criteria pollutant related to SIP control strategies or interference with attainment or maintenance of the NAAQS, as well as all other related requirements of the CAA. The air quality analysis displayed past air quality trends and provided information regarding future implications of the *de minimis* rule (predictive analysis). We find that MDEQ used reasonable methods and appropriate data in estimating the emissions effects of the new exemption. The following is a summary of Montana's air quality for criteria pollutants:

1. Ozone

A review of Montana's past monitoring data show no violations of the ozone NAAQS standard since 2001 (See TSD, pages 4-5.) Montana currently has no ozone nonattainment areas; and consequently, no

nonattainment area control plans with respect to ozone. On November 27, 2008 Montana submitted to EPA assurances certifying Montana's SIP was adequate for addressing the 1997 ozone NAAQS revision (see docket). On July 22, 2011 EPA partially approved "Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Montana".

In March 2008, EPA again promulgated revisions to the NAAQS for ozone. The revision lowered the ambient standards from the previous level of 0.08 parts per million (ppm) to 0.075 ppm as averaged over an eight-hour period. In addition, EPA's analysis to support the 2008 ozone NAAQS revision consistent with EPA's modeling of counties predicted to violate the new ozone standard in future years does not include any Montana counties. Using 2004–2006 data, EPA conducted a national scale air quality modeling analysis to estimate future year attainment/nonattainment for ozone.

Rural ozone monitoring currently occurs in Glacier National Park and near Sidney in eastern Montana. Glacier National Park data from 2001–2008 shows continued attainment with the revised ozone standard (See TSD, Figures 1–3.) The Sidney monitor was located in proximity to oil and gas industry development activities. Monitoring began at the Sidney site in October, 2008, and initial data shows attainment with the revised 8 hour ozone standard.

Data from Montana's past monitoring in the Billings area (the area in which conditions conducive to ozone formation are most likely to occur) does not show a violation of the revised 2008 NAAQS. Montana conducted three years of ozone monitoring (June–September, 2007–2010) in the Billings area (Shepherd Bard site) and two years of ozone season monitoring in the Missoula area (Frenchtown site) (See TSD, Figures 2–3.) Based on factors including, but not limited to, population density, area-wide vehicle miles traveled, and existing industrial activity (including oil and gas industry development), Montana determined these locations represent the areas with the highest potential for ozone formation. The design value for the Billings area was determined during 2005–2007 to be 0.059 ppm or 78.7% of the revised ozone NAAQS. Data from Missoula indicated an even lower design value.

Based on future estimates and projections of the number of *de minimis* notices (See TSD pages 36–41) and the minimal likely effect of the *de minimis* rule on VOC and NO_x emissions and

monitoring data that show the area has attained the 8-hour ozone and 1-hour ozone NAAQS, we propose to find that approving the *de minimis* rule would not interfere with attainment of the 8-hour ozone NAAQS in the State of Montana. Montana has been implementing the *de minimis* level of 15 tons since 1998 as a state-approved rule, and ozone levels have remained relatively stable. EPA proposes to find that raising the federally enforceable *de minimis* level from zero to five tons will not interfere with compliance with the ozone NAAQS standards.

2. Carbon Monoxide

The town of Billings, located in Yellowstone County, was designated nonattainment for the CO 8-hour NAAQS on March 3, 1978 (43 FR 9010) as a result of the 1977 CAA. Control plans were developed to bring Billings back into compliance following the nonattainment designation. The CO violation was attributed primarily to motor vehicle emissions (See TSD, pages 6 and 7.)

The town of Missoula, in Missoula County, was designated as a nonattainment area for CO in 1978 because of repeated violations of the CO 8-hour NAAQS in 1977 and early 1978. Most of the problem focused on congested intersections and residential wood burning. Missoula took steps to reduce ambient levels of CO, including intersection changes, woodstove regulations, open burning regulations and the Federal motor vehicle emission reduction program. However, Missoula continued to violate the 8-hour CO NAAQS until 1992, when it was required to implement an oxygenated fuels program. Since the program began, Missoula has not recorded a violation of the 8-hour CO NAAQS (See TSD, Figure 4.)

Between 1990 and 2000, CO emissions in the Missoula area decreased by 40%. The biggest reductions were from on-road motor vehicles and woodstoves. In 2000, these sources represented 95% of the CO emissions in the Missoula nonattainment area. The remaining sources, industry, natural gas combustion and railroads were responsible for less than 5% of CO emissions on a typical weekday (see 72 FR 46158; August 17, 2007).

In 72 FR 46158, EPA approved a request submitted by the State of Montana requesting to redesignate the Missoula "moderate" CO nonattainment area to attainment for the CO NAAQS. EPA also approved the new CO maintenance plan, which was submitted on May 27, 2005 and includes

transportation conformity motor vehicle emission budgets (MVEB) for 2000, 2010, and 2020.

The town of Great Falls, located in Cascade County, was designated nonattainment for CO on September 9, 1980 (45 FR 59315). This designation followed sixteen violations of the NAAQS 8-hour CO standard. Following the nonattainment designation, control plans were developed, but none were EPA approved. Great Falls was reevaluated in September 1990, based on the 1990 CAA Amendments and the lack of exceedances in the CO monitoring data for 1988 and 1989. On November 6, 1991 (56 FR 56799), Great Falls was listed as a "not classified" nonattainment area for CO. Great Falls was re-designated as attainment on May 9, 2002 (67 FR 31143) (See TSD page 5 for more details and Figure 5 for Great Falls CO monitoring data).

A review of CO monitoring data statewide from 2002–2008 shows relatively constant levels of overall CO emissions and monitoring data shows that ambient CO levels remain well below the CO NAAQS (See TSD, Figure 5). None of the maintenance plans rely on Title 17, Chapter 8, subchapter 7 of the Montana Air Quality Program (MAQP) to attain and maintain the NAAQS, and CO levels in all three maintenance areas have fallen significantly over the years.

Based on the minimal estimated increase in CO emissions due to the *de minimis* rule (See TSD pages 6–9 for basis and data), the relatively constant level of overall CO emissions, and monitoring data that shows that ambient CO levels remain well below the CO NAAQS, we propose to find that approving the *de minimis* rule would not interfere with continued attainment of the CO NAAQS in the State of Montana.

3. Particulate Matter (PM₁₀)

Based on the minimal estimated increase in PM emissions due to the *de minimis* rule (See TSD pages 9–27), the relatively constant level of overall PM₁₀ emissions, and monitoring data that shows that ambient PM₁₀ levels remain below the PM₁₀ NAAQS, we propose to find that approving the *de minimis* rule would not interfere with continued attainment of the PM₁₀ NAAQS in the State of Montana. Montana does not have any areas with monitoring data showing nonattainment for PM₁₀. (For supplemental information concerning PM₁₀ monitoring data, refer to TSD, pages 9–27.)

4. Particulate Matter (PM_{2.5})

Monitoring results show that Montana is currently in attainment for the 1997

and 2007 PM_{2.5} NAAQS (See TSD, Figures 16–18.) Libby, Lincoln County, is Montana's sole administratively designated PM_{2.5} nonattainment area (currently attaining the standard), that violated the 1997 annual standard. Montana does not have any other nonattainment areas for PM_{2.5}.

Based on the minimal estimated increase in PM_{2.5} emissions due to the *de minimis* rule (See TSD pages 27–30 for basis and data), the relatively constant level of overall PM_{2.5} emissions, and monitoring data that shows that ambient PM_{2.5} levels remain below the 24-hour and annual NAAQS for both the 1997 standard and the 2006 standard, we propose to find that approving the *de minimis* rule would not interfere with continued attainment of the PM_{2.5} NAAQS in the State of Montana.

5. Sulfur Dioxide

The Billings/Laurel Federal Implementation Plan (73 FR 21418), and the portions of the Billings/Laurel SO₂ Control Plan EPA approved, remain valid and enforceable, regardless of the existence of the *de minimis* rule. As such, we propose to find that approving the *de minimis* rule would not interfere with continued attainment of the SO₂ NAAQS in the State of Montana (See TSD, pages 31–33 for basis and data.) Montana does not have any other nonattainment areas for SO₂.

6. Nitrogen Dioxide

Montana currently has no NO₂ nonattainment areas; and consequently, no nonattainment area control plans with respect to NO₂. Past monitoring of ambient NO₂ reveals a history of exceedingly low concentrations (See TSD, Figures 20–22.) No discernable trend was observed during the monitoring period.

MDEQ has installed monitoring equipment, including NO₂ monitors, in response to the increase in oil and gas development in the eastern part of the State and in anticipation of the recently proposed revision to the NO₂ NAAQS (See TSD, Figure 22.) EPA strengthened the NO₂ NAAQS in January 2010 by establishing a new 1-hr standard at 100 ppb (represented by the 3-yr average of the 98th percentile from the annual distribution of daily max 1-hr averages) and retained the previous annual standard of 53 ppb.

EPA proposes to find that the *de minimis* rule will not interfere with continued attainment of the NO₂ NAAQS in the State of Montana, even in areas with increased oil and gas development.

ARM 17.8.743(1)(b)

The May 28, 2003 SIP revision for ARM 17.8.743(1)(b) for asphalt concrete plants and mineral crushers reduces the stringency of the current SIP approved regulations. We commented that the State must provide an analysis showing that this new rule will not interfere with compliance with the NAAQS or PSD increments. Section 110(l) of the CAA states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress, as defined in section 171 of the CAA, or any other applicable requirement of the CAA. Montana did not provide any analysis or demonstration that the increased permit threshold for asphalt concrete plants and mineral crushers, from 5 tons per year to 15 tons per year, for any airborne pollutant, other than lead, regulated under Chapter 8 of the ARM meets these criteria.

EPA has concerns about a modification size cutoff (15 tons per year) that the State proposes as *de minimis*. Fifteen tons per year represents the major modification significance level for one criteria pollutant (PM₁₀) and exceeds the significance level for another criteria pollutant (PM_{2.5}) as well as for several non-criteria pollutants. It also exceeds the major source threshold for hazardous air pollutants (HAPs). Because of these reasons, EPA determines that the revision to ARM 17.8.743(1)(b) is not *de minimis* in the sense of having a trivial environmental effect. EPA has agreed in several rulemaking actions that certain activities with emissions of 5 tons per year or less may be considered "insignificant." However, EPA never before denoted emissions increases as high as 15 tons per year as *de minimis*. Since the State did not provide an analysis as to why emission increases as high as 15 tons per year should be considered as having a trivial environmental effect, EPA finds no basis for approving this revision. Therefore, EPA lacks sufficient available information to determine that the proposed SIP relaxation would not interfere with any applicable requirement concerning attainment and maintenance of the NAAQS, PSD increment, or any other requirement of the Act. If the State submits a new SIP with the analysis, we would evaluate such an analysis.

V. Summary of Proposed Actions

Based on the above discussion, EPA proposes to find that the addition of

new rule ARM 17.8.745 would not interfere with attainment or maintenance of any of the NAAQS in the State of Montana and would not interfere with any other applicable requirement of the Act (See TSD for basis); and thus, are approvable under CAA section 110(l). Therefore, we propose to approve ARM 17.8.745 as submitted on June 25, 2010 by the State of Montana.

We are proposing to approve new section ARM 17.8.745; and thus, we are also proposing to approve all references to ARM 17.8.745. This includes: The phrases in 17.8.740(8)(a) and (c), respectively, (1) "except when a permit is not required under ARM 17.8.745" and (2) "except as provided in ARM 17.8.745" and the phrase "and 17.8.745" in 17.8.743(1), submitted on May 28, 2003; and the phrase "the emission increase meets the criteria in ARM 17.8.745 for a *de minimis* change not requiring a permit" in 17.8.764(1)(b) and (4), submitted on May 28, 2003.

EPA is proposing to disapprove the phrase "asphalt concrete plants and mineral crushers" in ARM 17.8.743(1)(b) submitted on May 28, 2003.

VI. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Incorporation by reference.

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

Dated: September 16, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011-24697 Filed 9-23-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0631; FRL-9470-3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP)

revision submitted by Maryland to establish transportation conformity regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 26, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2011-0631 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:*
fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2011-0631, Cristina Fernandez, Associate Director, Office of Air Planning Programs, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2011-0631. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI (or otherwise protected) through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [\[www.regulations.gov\]\(http://www.regulations.gov\), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.](http://</p>
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Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814-3335, or by e-mail at kotsch.martin@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the Rules and Regulations section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: August 29, 2011.

W.C. Early, Acting

Regional Administrator, Region III.

[FR Doc. 2011-24527 Filed 9-23-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81**

[EPA-R04-OAR-2009-1011-201066; FRL-9464-3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of the Greensboro-Winston-Salem-High Point 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to approve SIP revisions submitted on December 18, 2009, and December 22, 2010 (supplemental submission) by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality (DAQ), to support North Carolina's request to redesignate the Greensboro-Winston-Salem-High Point fine particulate matter (PM_{2.5}) nonattainment area (hereafter the "Greensboro Area" or "Area") to attainment for the 1997 Annual PM_{2.5} National Ambient Air Quality Standards (NAAQS). The Greensboro Area is comprised of Davidson and Guilford Counties in their entireties. EPA is now proposing four separate but related actions. First, EPA is proposing to approve the December 18, 2009, PM_{2.5} redesignation request, including the December 22, 2010, Motor Vehicle Emission Simulator (MOVES) mobile model supplement for the Greensboro Area, provided that EPA takes final action to approve specific provisions of the North Carolina Clean Smokestacks Act (NCCSA). Second, EPA is proposing to approve North Carolina's 2008 emissions inventory for the Greensboro Area under section 172(c)(3) of the Clean Air Act (CAA of Act). Third, subject to the same proviso regarding the NCCSA and final approval of the 2008 emissions inventory, EPA is proposing to approve the 1997 Annual PM_{2.5} NAAQS maintenance plan for the Greensboro Area, including the 2008 baseline emissions inventory, and the motor vehicle emission budgets (MVEBs) for PM_{2.5} and nitrogen oxides (NO_x) for the years 2011 and 2021 for the Greensboro Area. EPA is also describing the status of its transportation conformity adequacy determination for the new 2011 and 2021 MVEBs for PM_{2.5} and NO_x that are contained in the 1997 Annual PM_{2.5}

NAAQS maintenance plan for the Greensboro Area. Fourth and separate from the action to redesignate the Area, EPA is proposing to determine that the Greensboro Area has attained the 1997 Annual PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010. These proposed actions are being taken pursuant to the CAA and its implementing regulations.

DATES: Comments must be received on or before October 26, 2011.**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2009-1011, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* benjamin.lynora@epa.gov.

3. *Fax:* (404) 562-9019.

4. *Mail:* EPA-R04-OAR-2009-1011, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Ms. Lynora Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2009-1011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment

that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Joel Huey may be reached by phone at (404) 562-9104 or via electronic mail at huey.joel@epa.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. What are the actions EPA is proposing to take?
- II. What is the background for EPA's proposed actions?
- III. What are the criteria for redesignation?
- IV. Why is EPA proposing these actions?
- V. What is the effect of EPA's proposed actions?
- VI. What is EPA's analysis of the request?

- VII. What is EPA's analysis of North Carolina's proposed PM_{2.5} and NO_x MVEBs for the Greensboro area?
- VIII. What is the status of EPA's adequacy determination for the proposed PM_{2.5} and NO_x MVEBs for 2011 and 2021 for the Greensboro area?
- IX. What is EPA's analysis of the proposed 2008 base year emissions inventory for the Greensboro area?
- X. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Proposed Approval of the 2011 and 2021 PM_{2.5} and NO_x MVEBs for the Greensboro Area
- XI. Proposed Action on the Determination That the Greensboro Area Has Attained the 1997 PM_{2.5} NAAQS by Its Applicable Attainment Date
- XII. Statutory and Executive Order Reviews

I. What are the actions EPA is proposing to take?

EPA is proposing to take the following four separate but related actions, some of which involve multiple elements: (1) To redesignate the Greensboro Area to attainment for the 1997 Annual PM_{2.5} NAAQS, provided EPA approves the emissions inventory submitted with the maintenance plan as well as the NCCSA which is the subject of separate Federal rulemaking action; (2) to approve, under section 172(c)(3) of the CAA, the emissions inventory submitted with the maintenance plan; (3) to approve into the North Carolina SIP, under section 175A of the CAA, Greensboro's 1997 Annual PM_{2.5} NAAQS maintenance plan, including the associated MVEBs (EPA is also notifying the public of the status of EPA's adequacy determination for the Greensboro Area MVEBs); and (4) to determine, pursuant to section 179(c) of the CAA, that the Greensboro Area attained the 1997 PM_{2.5} NAAQS by its attainment date of April 5, 2010. On January 4, 2010, at 75 FR 54, EPA determined that the Greensboro Area was attaining the 1997 PM_{2.5} NAAQS. EPA is now proposing to determine that the Area is continuing to attain the 1997 PM_{2.5} NAAQS and to take several additional related actions regarding the Area, which are summarized below and described in greater detail throughout this notice of proposed rulemaking.

First, EPA proposes to determine that, if EPA's proposed approvals of the 2008 baseline emissions inventory for the Greensboro Area and the NCCSA Federal rulemaking action are finalized, the Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In this action, EPA is proposing to approve a request to change the legal designation of Davidson and Guilford Counties in the Greensboro Area from nonattainment to attainment for the 1997 Annual PM_{2.5} NAAQS. The emissions inventory is

being proposed for approval today, and the NCCSA rules were proposed for approval in a separate action on June 22, 2011 (76 FR 36468).

Second, EPA is proposing to approve North Carolina's 2008 emissions inventory for the Greensboro Area (under CAA section 172(c)(3)). North Carolina selected 2008 as the attainment emissions inventory year for the Greensboro Area. This attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 Annual PM_{2.5} NAAQS and is a current, comprehensive inventory that meets the requirements of section 172(c)(3).

Third, subject to EPA's final approval of the NCCSA into the SIP, EPA is proposing to approve North Carolina's 1997 Annual PM_{2.5} NAAQS maintenance plan for the Greensboro Area as meeting the requirements of CAA section 175A (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Greensboro Area in attainment of the 1997 Annual PM_{2.5} NAAQS through 2021. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes PM_{2.5} and NO_x MVEBs for the years 2011 and 2021. EPA is proposing to approve into the North Carolina SIP the 2011 and 2021 MVEBs that are included as part of North Carolina's maintenance plan for the 1997 Annual PM_{2.5} NAAQS.

On a related matter to this third action, EPA is also notifying the public of the status of EPA's adequacy process (Adequacy) for the newly-established PM_{2.5} and NO_x MVEBs for 2011 and 2021 for the Greensboro Area. The Adequacy comment period for the Greensboro Area 2011 and 2021 MVEBs began on November 23, 2010, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (<http://www.epa.gov/otaq/stateresources/transconf/currrips.htm>). The Adequacy comment period for these MVEBs closed on December 23, 2010, and EPA received no adverse comments. Please see section VIII of this proposed rulemaking for further explanation of this process and for more details on the MVEBs determination.

Fourth and separate from the action to redesignate the Area, EPA is proposing to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Greensboro Area has attained the 1997 Annual PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010.

Today's notice of proposed rulemaking is in response to North Carolina's December 18, 2009, SIP

submittal and subsequent supplement of December 22, 2010. Those documents address the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Greensboro Area to attainment for the 1997 Annual PM_{2.5} NAAQS.

II. What is the background for EPA's proposed actions?

Fine particle pollution can be emitted directly or formed secondarily in the atmosphere. The main precursors of PM_{2.5} are sulfur dioxide (SO₂), NO_x, ammonia and volatile organic compounds (VOCs). Unless otherwise noted by the State or EPA, ammonia and VOCs are presumed to be insignificant contributors to PM_{2.5} formation, whereas SO₂ and NO_x are presumed to be significant contributors to PM_{2.5} formation. Sulfates are a type of secondary particle formed from SO₂ emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from NO_x emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, EPA promulgated the first air quality standards for PM_{2.5}. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m³), based on a three-year average of annual mean PM_{2.5} concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 µg/m³, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average NAAQS at 15 µg/m³ but revised the 24-hour NAAQS to 35 µg/m³, based again on the three-year average of the 98th percentile of 24-hour concentrations.¹ Under EPA regulations at 40 CFR part 50, the primary and secondary 1997 Annual PM_{2.5} NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 µg/m³ at all relevant monitoring sites in the subject area over a 3-year period.

On January 5, 2005, at 70 FR 944, and as supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Greensboro Area as nonattainment for

¹ In response to legal challenges of the annual standard promulgated in 2006, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this NAAQS to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 Annual NAAQS would also indicate attainment of the remanded 2006 Annual NAAQS.

the 1997 Annual PM_{2.5} NAAQS. In that action, EPA defined the Greensboro Area to include Davidson and Guilford Counties in their entireties. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard established in 2006, designating the Greensboro Area as attaining this NAAQS. That action clarified that the Greensboro Area was also attaining the 24-hour NAAQS promulgated in 1997. EPA did not promulgate designations for the annual average NAAQS promulgated in 2006 since the NAAQS was essentially identical to the annual NAAQS promulgated in 1997. Therefore, the Greensboro Area is designated nonattainment only for the annual PM_{2.5} NAAQS promulgated in 1997, and today's action only addresses this designation.

All 1997 PM_{2.5} NAAQS areas were designated under subpart 1 of title I, part D, of the CAA. Subpart 1 contains the general requirements for nonattainment areas for any pollutant governed by a NAAQS and is less prescriptive than the other subparts of title I, part D. On April 25, 2007, at 72 FR 20664, EPA promulgated its PM_{2.5} Implementation Rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 PM_{2.5} NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the NAAQS, as discussed below.

On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR), which addressed the interstate transport requirements of the CAA and required states to significantly reduce SO₂ and NO_x emissions from power plants (70 FR 25162). The associated Federal Implementation Plans (FIPs) were published on April 28, 2006 (71 FR 25328). However, on July 11, 2008, the D.C. Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (D.C. Cir., 2008). EPA petitioned for rehearing, and the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir., 2008). The Court left CAIR in place to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion but declined to impose a schedule on EPA for completing that action. *Id.* As a result of these court rulings, the power plant

emission reductions that resulted solely from the development, promulgation, and implementation of CAIR, and the associated contribution to air quality improvement that occurred solely as a result of CAIR in the Greensboro Area could not be considered to be permanent.

On August 8, 2011, EPA published the Cross State Air Pollution Rule (CSAPR) in the **Federal Register** under the title, "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States" (the "Cross-State Air Pollution Rule" (CSAPR)) (76 FR 48208, August 8, 2011) to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. The CAIR emission reduction requirements limit emissions in North Carolina and states upwind of North Carolina through 2011 and the CSAPR requires similar or greater reductions in the relevant areas in 2012 and beyond. The emission reductions that the CSAPR mandates may be considered to be permanent and enforceable. In turn, the air quality improvement in the Greensboro Area that has resulted from EGU emission reductions associated with CAIR (as well as the substantial further air quality improvement that would be expected to result from full implementation of the CSAPR) may also be considered to be permanent and enforceable. EPA proposes that the requirement in section 107(d)(3)(E)(iii) has now been met because the emission reduction requirements of CAIR address emissions through 2011 and EPA has now promulgated CSAPR which requires similar or greater reductions in the relevant areas in 2012 and beyond. Because the emission reduction requirements of CAIR are enforceable through the 2011 control period, and because CSAPR has now been promulgated to address the requirements previously addressed by CAIR and gets similar or greater reductions in the relevant areas in 2012 and beyond, EPA is proposing to determine that the emission reductions that led to attainment in the Greensboro nonattainment area can now be considered permanent and enforceable. Therefore, EPA proposes to find that the transport requirement of CAA section 107(d)(3)(E)(iii) has been met for the Greensboro Area.

The 3-year ambient air quality data for 2006–2008 indicated no violations of the 1997 PM_{2.5} NAAQS for the Greensboro Area. As a result, on December 18, 2009, and as supplemented on December 22, 2010, North Carolina requested redesignation

of the Greensboro Area to attainment for the 1997 Annual PM_{2.5} NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the 1997 Annual PM_{2.5} NAAQS for 2006–2008, indicating that the 1997 Annual PM_{2.5} NAAQS had been achieved for the Greensboro Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). From 2005 through the present, the monitored annual average PM_{2.5} values for the Greensboro Area have declined such that the Area is attaining the 1997 Annual PM_{2.5} NAAQS. On January 4, 2010, EPA determined that the Greensboro Area had attained the 1997 Annual PM_{2.5} NAAQS (75 FR 54). While annual PM_{2.5} concentrations are dependent on a variety of conditions, the overall downtrend in annual PM_{2.5} concentrations in the Greensboro Area can be attributed to the reduction of SO₂ emissions, as will be discussed in more detail in section VI of this proposed rulemaking. EPA is now proposing to find that the Greensboro Area continues to attain the 1997 PM_{2.5} NAAQS.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of title I of the CAA.

EPA has provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, and supplemented

on April 28, 1992, 57 FR 18070) and has provided further guidance on processing redesignation requests in the following documents:

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum")
2. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and
3. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

IV. Why is EPA proposing these actions?

On December 18, 2009, and as supplemented on December 22, 2010, the State of North Carolina, through DAQ, requested redesignation of the Greensboro Area to attainment for the 1997 Annual PM_{2.5} NAAQS. EPA's evaluation indicates that the Greensboro Area has attained the 1997 Annual PM_{2.5} NAAQS. If EPA finalizes approval of the emissions inventory and the NCCSA rulemaking, the Area will meet the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result, EPA is proposing to take the first three related actions previously summarized. The fourth action, to determine that the Area has attained the 1997 Annual PM_{2.5} NAAQS by its attainment date, is being proposed in accordance with section 179(c)(1) of the CAA based upon EPA's review of the data for 2007–2009. Section 179(c)(1) reads as follows: "As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date." EPA proposes to determine that the Area attained the 1997 Annual PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010.

² The values in Table 1 represent the most current quality assured, quality controlled and certified ambient air monitoring data available in the EPA

V. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the North Carolina submittal being proposed for approval today. Approval of North Carolina's redesignation request would change the legal designation of Davidson and Guilford Counties in North Carolina for the 1997 Annual PM_{2.5} NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Approval of North Carolina's request would also incorporate into the North Carolina SIP a plan for maintaining the 1997 Annual PM_{2.5} NAAQS in the Greensboro Area through 2021. The maintenance plan includes, among other components, contingency measures to remedy potential future violations of the 1997 Annual PM_{2.5} NAAQS. Approval of North Carolina's maintenance plan would also result in approval of the NO_x MVEBs. The PM_{2.5} MVEBs for the Greensboro Area are 153,313 kilograms/year (kg/yr) for both 2011 and 2021. The NO_x MVEBs for 2011 and 2021 for Davidson County are 4,086,413 kg/yr and 2,148,938 kg/yr, respectively. The PM_{2.5} MVEBs for Guilford County are 421,841 kg/yr for both 2011 and 2021. The NO_x MVEBs for 2011 and 2021 for Guilford County are 11,133,605 kg/yr and 6,309,650 kg/yr, respectively. Final action would also approve the Area's emissions inventory under section 172(c)(3). Additionally, EPA is notifying the public of the status of its adequacy determination for the PM_{2.5} and NO_x MVEBs for 2011 and 2021.

VI. What is EPA's analysis of the request?

As stated above, in accordance with the CAA, EPA proposes in today's action to: (1) Redesignate the Greensboro Area to attainment for the 1997 Annual PM_{2.5} NAAQS; (2) approve the Greensboro Area emissions inventory submitted with the maintenance plan; (3) approve into the North Carolina SIP Greensboro's 1997 Annual PM_{2.5} NAAQS maintenance plan, including the associated MVEBs; and (4) determine that the Greensboro Area attained the 1997 PM_{2.5} NAAQS by its attainment date of April 5, 2010. The first three of these actions are based upon EPA's determination that the Greensboro Area continues to attain the 1997 Annual PM_{2.5} NAAQS and that all other redesignation criteria have been met for the Greensboro Area, provided EPA approves the emissions inventory

AQS database and, therefore differ slightly from the values submitted in the North Carolina redesignation request. The Colfax monitor was

submitted with the maintenance plan and the NCCSA rulemaking. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section. The fourth action, EPA's proposed determination that the Greensboro Area attained the 1997 PM_{2.5} NAAQS by its attainment date of April 5, 2010, is discussed in section XI.

Criteria (1)—The Greensboro Area has Attained the 1997 Annual PM_{2.5} NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). EPA is proposing to determine that the Greensboro Area continues to attain the 1997 Annual PM_{2.5} NAAQS. For PM_{2.5}, an area may be considered to be attaining the 1997 Annual PM_{2.5} NAAQS if it meets the 1997 Annual PM_{2.5} NAAQS, as determined in accordance with 40 CFR 50.7 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain these NAAQS, the 3-year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 µg/m³ at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

On January 4, 2010, at 75 FR 54, EPA determined that the Greensboro Area was attaining the 1997 PM_{2.5} NAAQS. EPA reviewed PM_{2.5} monitoring data from monitoring sites in the Greensboro Area for the 1997 Annual PM_{2.5} NAAQS for 2006–2009. These data have been quality-assured and are recorded in AQS. The annual arithmetic mean PM_{2.5} concentrations for 2006–2009 and the 3-year averages of these values (*i.e.*, design values) are summarized in Table 1.² EPA has reviewed more recent data which indicate that the Greensboro Area continues to attain the 1997 PM_{2.5} NAAQS. The design values for 2007–2009 and 2008–2010 are also included in Table 1 and demonstrate that the Greensboro Area continues to meet the PM_{2.5} NAAQS and that the ambient

added in 2007 and thus does not have the three years of data required for calculating a design value.

concentrations of PM_{2.5} are continuing to decrease in the Area.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE GREENSBORO 1997 ANNUAL PM_{2.5} NONATTAINMENT AREA (µg/m³)

County	Site name	Monitor ID	Annual average PM _{2.5} concentrations (µg/m ³)				
			2006	2007 -	2008	2009	2010 ³
Davidson	Lexington	37-057-0002	15.13	14.64	13.61	10.61	12.1
Guilford	Mendenhall	37-081-0013	14.5	13.14	11.41	9.31	10.4
Guilford	Colfax	37-035-0014	N/A	N/A	12.32	9.63	10.5

County	Site name	Monitor ID	Three-year PM _{2.5} design values (µg/m ³)		
			2006–2008	2007–2009	2008–2010 ³
Davidson	Lexington	37-057-0002	14.5	13.0	12.1
Guilford	Mendenhall	37-081-0013	13.0	11.3	10.4
Guilford	Colfax	37-035-0014	N/A	N/A	10.8

The 3-year design value (2006–2008) submitted by North Carolina for redesignation of the Greensboro Area is 14.5 µg/m³, which meets the NAAQS as described above. Preliminary 2010 air quality data that are available in AQS, but not yet certified, indicate that the Area continues to attain the PM_{2.5} NAAQS. As mentioned above, on January 4, 2010, (75 FR 54) EPA published a clean data determination for the Greensboro Area for the 1997 PM_{2.5} NAAQS. In today's action, EPA is proposing to determine that the Area is continuing to attain the 1997 PM_{2.5} NAAQS. EPA will not go forward with the redesignation if the Area does not continue to attain until the time that EPA finalizes the redesignation. As discussed in more detail below, the State of North Carolina has committed to continue monitoring in the Area in accordance with 40 CFR part 58.

Criteria (5)—North Carolina Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA; and Criteria (2)—North Carolina Has a Fully Approved SIP Under Section 110(k) for the Greensboro Area

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under Section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that North Carolina has met all applicable SIP requirements for the Greensboro Area under section 110 of the CAA (general SIP requirements) for

purposes of redesignation. EPA also proposes to find that the North Carolina SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to 1997 Annual PM_{2.5} nonattainment areas). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable under section 110(k). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under the CAA. For the purposes of review of the State's redesignation request, the SIP needs only to be fully approved with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. Greensboro Area Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements

(Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants (e.g., NO_x SIP Call,⁴ CAIR,⁵ and the CSAPR). The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the

⁴ On October 27, 1998 (63 FR 57356), EPA issued a NO_x SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_x in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_x SIP Call, North Carolina developed rules governing the control of NO_x emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, major cement kilns, and internal combustion engines. On December 27, 2002, EPA approved North Carolina's rules as fulfilling Phase I (67 FR 78987).

⁵ On May 12, 2005 (70 FR 25162), EPA promulgated CAIR which required 28 upwind States and the District of Columbia to revise their SIPs to include control measures that would reduce emissions of SO₂ and NO_x. Various aspects of CAIR rule were petitioned in court and on December 23, 2008, the U.S. Court of Appeals for the District of Columbia Circuit remanded CAIR to EPA (see *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir., December 23, 2008)) which left CAIR in place to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's ruling. The Court directed EPA to remedy various areas of the rule that were petitioned consistent with its July 11, 2008 (see *North Carolina v. EPA*, 531 F.3d 836 (D.C. Cir., July 11, 2008)), opinion, but declined to impose a schedule on EPA for completing that action. *Id.* Therefore, CAIR is currently in effect in North Carolina.

³ The preliminary PM_{2.5} ambient air quality data for 2010 for the Greensboro Area indicates that the Area is attaining the NAAQS with 2008–2010 design values. This preliminary data includes complete data from all quarters of 2010 but has not yet been certified and is thus subject to change.

requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. However, as discussed later in this notice, addressing pollutant transport from other states is an important part of an area's maintenance demonstration.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

EPA has not yet completed rulemaking on a submittal from North Carolina dated April 1, 2008, addressing "infrastructure SIP" elements required under CAA section 110(a)(2). However, these are statewide requirements that are not a consequence of the nonattainment status of the Greensboro Area. As stated above, EPA believes that section 110 elements not linked to an area's nonattainment status are not applicable for purposes of redesignation. Therefore, notwithstanding the fact that EPA has not yet completed rulemaking on North Carolina's submittal for the PM_{2.5} infrastructure SIP elements of section 110(a)(2), EPA believes it has approved all SIP elements under section 110 that must be approved as a prerequisite for

redesignating the Greensboro Area to attainment.

Title I, Part D requirements. EPA proposes that with approval of North Carolina's base year emissions inventory, which is part of the maintenance plan submittal, the North Carolina SIP will meet applicable SIP requirements under part D of title I of the CAA. As discussed in greater detail below, EPA believes the emissions inventory is approvable because the 2008 direct PM_{2.5}, SO₂, and NO_x emissions for North Carolina were developed consistent with EPA guidance for emissions inventories and represent a comprehensive, accurate and current inventory as required by section 172(c)(3).

Part D, subpart 1 applicable SIP requirements. EPA has determined that if the approval of the base year emissions inventories, discussed in section IX of this rulemaking, is finalized, the North Carolina SIP will meet the applicable SIP requirements for the Greensboro Area for purposes of redesignation under title I, part D of the CAA. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 Annual PM_{2.5} NAAQS were designated under this subpart of the CAA and the requirements applicable to them are contained in sections 172 and 176.

For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992).

Subpart 1 Section 172 Requirements. Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. However, pursuant to 40 CFR 51.1004(c), EPA's January 4, 2010, determination that the

Greensboro Area was attaining the PM_{2.5} standard suspended North Carolina's obligation to submit most of the attainment planning requirements that would otherwise apply. Specifically, the determination of attainment suspended North Carolina's obligation to submit an attainment demonstration and planning SIPs to provide for reasonable further progress (RFP), reasonable available control measures, and contingency measures under section 172(c)(9).

The General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992)).

Because attainment has been reached in the Greensboro Area, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the Area continues to attain the standard until redesignation. See also 40 CFR 51.1004(c).

The RFP plan requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because EPA has determined that the Greensboro Area has monitored attainment of the 1997 Annual PM_{2.5} NAAQS. See General Preamble, 57 FR 13564. See also 40 CFR 51.1004(c). In addition, because the Greensboro Area has attained the 1997 Annual PM_{2.5} NAAQS and is no longer subject to a RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. As part of North Carolina's redesignation request for the Greensboro Area, North Carolina submitted a 2008 base year emissions inventory. As discussed below in section IX, EPA is proposing to approve the 2008 base year inventory submitted with the redesignation request as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be

allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." North Carolina has demonstrated that the Greensboro Area will be able to maintain the NAAQS without part D NSR in effect, and therefore North Carolina need not have fully approved part D NSR programs prior to approval of the redesignation request. Nonetheless, North Carolina currently has a fully-approved part D NSR program in place. North Carolina's PSD program will become effective in the Greensboro Area upon redesignation to attainment. Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the North Carolina SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements⁶ as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); see also 60 FR 62748 (December 7, 1995) (resignation of Tampa, Florida). Thus, the Greensboro Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

b. The Greensboro Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the applicable North Carolina SIP for the Greensboro Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation for the 1997 Annual PM_{2.5} NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426; plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein). Following passage of the CAA of 1970, North Carolina has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1997 Annual PM_{2.5} NAAQS SIP elements applicable in the Greensboro Area (45 FR 26038, April 17, 1980; 46 FR 43137, August 27, 1981; 50 FR 41501, October 11, 1985; 51 FR 41786, November 19, 1986; and 51 FR 45468, December 19, 1986).

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. In addition, EPA believes that since the part D subpart 1 requirements did not become due prior to submission of the redesignation request, they are also not applicable requirements for purposes of redesignation. *Sierra Club v. EPA*, 375

⁶ CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). With the approval of the emissions inventory, EPA will have approved all Part D subpart 1 requirements applicable for purposes of this redesignation.

Criteria (3)—The Air Quality Improvement in the Greensboro Area 1997 Annual PM_{2.5} NAAQS Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA believes North Carolina has demonstrated that the observed air quality improvement in the Greensboro Area is due to permanent and enforceable reductions resulting from implementation of the SIP, Federal measures, and other state adopted measures.

Fine particulate matter, or PM_{2.5}, refers to airborne particles less than or equal to 2.5 micrometers in diameter. Although treated as a single pollutant, fine particles come from many different sources and are composed of many different compounds. One of the largest components of PM_{2.5} in the southeastern United States is sulfate, which is formed through various chemical reactions from the precursor SO₂. The other major component of PM_{2.5} is organic carbon, which originates predominantly from biogenic emission sources. Nitrate, which is formed from the precursor NO_x, is also a component of PM_{2.5}. Crustal materials from windblown dust and elemental carbon from combustion sources are less significant contributors to total PM_{2.5}.

State and Federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions.

The Federal measures that have been implemented include:

Tier 2 vehicle standards. In addition to requiring NO_x controls, the Tier 2

rule reduced the allowable sulfur content of gasoline to 30 parts per million (ppm) starting in January of 2006. Most gasoline sold in North Carolina prior to this had a sulfur content of approximately 300 ppm.

Heavy-duty gasoline and diesel highway vehicle standards. The second phase of the standards and testing procedures, which began in 2007, reduces particulate matter (PM) and NO_x from heavy-duty highway engines and also reduces highway diesel fuel sulfur content to 15 ppm. The total program is expected to achieve a 90 and 95 percent reduction in PM and NO_x emissions from heavy-duty highway engines, respectively.

Nonroad spark-ignition engines and recreational engines standards. Tier 1 of this standard, implemented in 2004, and Tier 2, implemented in 2007, have reduced and will continue to reduce PM emissions.

Large nonroad diesel engine standards. Promulgated in 2004, this rule is being phased in between 2008 and 2014. This rule will reduce sulfur content in nonroad diesel fuel and, when fully implemented, will reduce NO_x and direct PM_{2.5} emissions by over 90 percent from these engines.

CAIR and the Cross-State Air Pollution Rule (CSAPR). As previously discussed, the remanded CAIR, originally promulgated to reduce transported pollution, was left in place to "temporarily preserve the environmental values covered by CAIR" until EPA replaced it with a rule

consistent with the Court's opinion. To remedy CAIR's flaws, EPA promulgated the final CSAPR on August 8, 2011. CSAPR addresses the interstate transport requirements of the CAA with respect to the 1997 ozone, 1997 PM_{2.5} and 2006 PM_{2.5} NAAQS. As noted previously, the requirements of CAIR address emissions through the 2011 control period and CSAPR requires similar or greater emission reductions in the relevant areas in 2012 and beyond.

The state measures that have been implemented to date and relied upon by North Carolina to demonstrate attainment and/or maintenance include:

NCCSA. The primary state-adopted measure is the NCCSA, enacted in June 2002. The NCCSA includes a schedule of system-wide caps on emissions of NO_x and SO₂, the first of which became effective in 2007, and has no provision for the trading of pollution credits from one utility to another. According to North Carolina, this rule requires coal-fired power plants in the State to reduce annual NO_x emissions from 245,000 tons in 1998 to 56,000 tons by 2009 (a 77 percent reduction) and to reduce annual SO₂ emissions from 489,000 tons in 1998 to 250,000 tons by 2009 (a 49 percent reduction), and further SO₂ reductions to 130,000 tons in 2013 (a 73 percent reduction). Although there are no power plants located within the Greensboro Area, there are power plants located around the Area. On August 21, 2009, North Carolina submitted a SIP revision to incorporate specific provisions of the NCCSA into the

federally approved SIP. On June 22, 2011, EPA proposed approval of the NCCSA rules as a revision to the SIP and expects to take final action on it in a rulemaking separate from today's proposed action but prior to any final action on this redesignation.

Another significant rulemaking which has led to permanent and enforceable reductions is the NO_x SIP Call rule. This rule was predicted to reduce summertime NO_x emissions from power plants and other industries by over 60 percent in North Carolina by 2006. See Table III-5 of NO_x SIP Call, 63 FR 57356, 57434 (October 27, 1998). These emission reductions are state and federally enforceable.

Table 2 presents the annual emissions from North Carolina sources as recorded in EPA's acid rain database. Since 2002, when the NO_x controls started coming on-line to meet the NO_x SIP Call, and later to meet the NCCSA, the annual NO_x emissions from subject sources have decreased dramatically from 145,706 tons per year (tpy) in 2002 to 61,669 tpy in 2008. In 2009 the emissions decreased to 44,506 tpy—down more than 69 percent from 2002. Between 2005 and 2008, the annual SO₂ emissions from the utilities in North Carolina decreased by more than half from 500,936 tpy to 227,030 tpy, or nearly 274,000 tons reduced. In 2009, the emissions were again halved, down 76 percent from 2002. The decline in SO₂ emissions has coincided with a decline in annual PM_{2.5} concentrations across North Carolina.

TABLE 2—ANNUAL EMISSIONS FROM ALL NC SOURCES IN THE EPA CLEAN AIR MARKETS DATABASE

Year	Annual SO ₂ emissions (tons)	Annual NO _x emissions (tons)
2002	462,993	145,706
2003	462,041	135,879
2004	472,320	124,079
2005	500,936	114,300
2006	462,143	108,584
2007	370,827	64,770
2008	227,030	61,669
2009	110,948	44,506

Other state measures have been implemented that are state enforceable but not a part of the federally-enforceable SIP. Such measures contribute to reductions in pollutant emissions, although to a lesser extent than the ones identified above, and include the following:

Clean Air Bill. This state legislation expanded the inspection and maintenance program from 9 counties to 48 counties and was phased in for the

Greensboro Area from July 1, 2002 through July 1, 2003. This program reduces NO_x, VOC, and carbon monoxide (CO) emissions.

Open burning. This regulation, originally approved in 1997, prohibits the open burning of man-made materials throughout the State. Additionally, this regulation prohibits open burning of yard waste in areas for which the DAQ forecasts an air quality action day. The open burning regulation will reduce

PM_{2.5} emissions, as well as NO_x, VOC and CO emissions.

Diesel Retrofits. As part of the North Carolina Mobile Source Emission Reduction Grants program, a number of cities, counties and school districts have installed diesel oxidation catalysts or diesel particulate filters on their diesel equipment. The vehicles that have been retrofitted include school buses and county fleet trucks used for solid waste pickup. These types of filters are

designed to reduce PM engine emissions, and when used with ultra low sulfur diesel fuel, NO_x and VOC emissions are also reduced. Even though these emission reductions are voluntary and not enforceable, they are still considered permanent reductions.

Diesel Emissions Reduction Act (DERA). DERA provides new diesel emissions reduction grant authority for EPA. This funding is used to achieve significant reductions in diesel emissions that improve air quality and protect public health. The DERA funds that the DAQ has received have been used to retrofit, repower, or replace existing diesel engines from on-road and nonroad mobile source vehicles and equipment. This program will reduce PM, NO_x, and VOC emissions. Even though these emission reductions are voluntary, they are still considered permanent reductions once a retrofit is completed. To date, North Carolina has retrofitted over 6,000 diesel school buses. In addition to impacting local emissions in the nonattainment area, most of these measures impact emissions statewide.

EPA agrees with North Carolina's assessment that, although PM_{2.5} and PM_{2.5} precursor reductions within the nonattainment area have contributed to improved air quality, the majority of the improvement in ambient PM_{2.5} concentrations has resulted from reductions in SO₂ emissions from in-state coal-fired power plants due to the NCCSA. The annual emissions from these facilities have significantly decreased since 2005, with over 250,000 tons of SO₂ emission reductions in 2008 compared to 2005. EPA's analysis of emissions data available in from the Clean Air Markets Division Web site (<http://www.epa.gov/airmarkets/>) shows that the statewide reductions in SO₂ emissions are much greater than any decreases in emissions that can be attributed to decreases in demand associated with reductions in operating hours or heat inputs at North Carolina power plants. While coal-fired electric power generation in North Carolina decreased 4.8 percent from 2005 to 2008,⁷ SO₂ emissions from coal-fired electric power plants declined 46.0 percent during the same period.

The NCCSA reductions took place beginning in 2006, the first year of the 3-year attainment period submitted by North Carolina for redesignation of the Greensboro Area. Since the final compliance date for the NCCSA SO₂ emissions caps is 2013, future design

values are expected to continue to decline below the 2006–2008 attaining design values. The significant statewide reductions in utility SO₂ emissions will be permanent and enforceable upon EPA's approval of the NCCSA rules into the North Carolina SIP. Further, EPA does not have any information to suggest that the decrease in ambient PM_{2.5} concentrations in the Greensboro Area is due to unusually favorable meteorological conditions. Additionally, the emission reductions resulting from the NCCSA discussed above are of a greater magnitude than any influence that could be expected from meteorology. The 250,000 tons of SO₂ emission reductions since 2005 represents a greater than 41 percent reduction of statewide SO₂ emissions. It is reasonable to expect that such significant reductions have reduced ambient PM_{2.5} levels throughout the State—including in the Greensboro Area. Indeed, every PM_{2.5} monitor in the State has shown a consistent downward trend during the period from 2006–2009.⁸

Criteria (4)—The Greensboro Area has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Greensboro Area to attainment for the 1997 Annual PM_{2.5} NAAQS, DAQ submitted a SIP revision to provide for the maintenance of the 1997 Annual PM_{2.5} NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of

future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 1997 Annual PM_{2.5} violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA finds that North Carolina's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the North Carolina SIP, provided that EPA takes final action to approve the NCCSA rules.

b. Attainment Emissions Inventory

The Greensboro Area first attained the 1997 Annual PM_{2.5} NAAQS based on monitoring data for the 3-year period 2006–2008. North Carolina selected 2008 as the attainment emissions inventory year in part because it was already in the process of developing some emissions inventory data for this year. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 Annual PM_{2.5} NAAQS. North Carolina began development of the attainment inventory by first generating a baseline emissions inventory for the Greensboro Area. As noted above, the year 2008 was chosen as the base year for developing a comprehensive emissions inventory for primary PM_{2.5}, SO₂, and NO_x, for which projected emissions could be developed for 2011, 2014, 2017, and 2021. In addition to comparing the final year of the plan, 2021, to the base year, 2008, North Carolina compared interim years to the 2008 baseline to demonstrate that these years are also expected to show continued maintenance of the annual PM_{2.5} standard.

The emissions inventories are composed of four major types of sources: Point, area, on-road mobile and non-road mobile. The future year emissions inventories have been estimated using projected rates of growth in population, traffic, economic activity, expected control programs, and other parameters. Non-road mobile emissions estimates were based on the EPA's NONROAD2008, a non-road mobile model, with the exception of railroad locomotive and aircraft engine emissions. The railroad locomotive and aircraft engine emissions were estimated by taking activity data, such as landings

⁷ Electric Power Annual 2009, DOE/EIA-0348(2009), North Carolina Electricity Profile, Tables 5 and 7. April 2011.

⁸ <http://www.epa.gov/airtrends/values.html>.

and takeoffs, and multiplying by an emission factor. On-road mobile source emissions were calculated using EPA's MOVES mobile emission factors model. The 2008 SO₂, NO_x and PM_{2.5} emissions for the Greensboro Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Tables 3 through 5 of the following subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The December 18, 2009, final submittal and December 22, 2010,

supplement included a maintenance plan for the Greensboro Area. This demonstration:

(i) Shows compliance with and maintenance of the annual PM_{2.5} standard by providing information to support the demonstration that current and future emissions of SO₂, NO_x and PM_{2.5} remain at or below 2008 SO₂, NO_x and PM_{2.5} emissions levels.

(ii) Uses 2008 as the attainment year and includes future emission inventory projections for 2011, 2014, 2017, and 2021 as shown in Tables 3–6 below.

(iii) Identifies an "out year" at least 10 years (and beyond) after the time

necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, PM_{2.5} and NO_x MVEBs were established for the last year (2021) of the maintenance plan. Additionally, North Carolina chose, through interagency consultation, to establish PM_{2.5} and NO_x MVEBs for 2011 (see section VII below).

(iv) Provides, as shown in Table 6 below, the actual and projected emissions inventories, in tpy, for the Greensboro Area.

TABLE 3—ACTUAL AND PROJECTED NO_x EMISSIONS FROM ALL SOURCE CATEGORIES IN THE GREENSBORO AREA (TPY)

County	2008	2011	2014	2017	2021
Point					
Davidson	841	865	892	920	961
Guilford	231	231	232	233	237
Total	1072	1096	1124	1153	1198
Area					
Davidson	583	551	516	486	438
Guilford	1243	1210	1177	1146	1099
Total	1826	1761	1693	1632	1537
On-road Mobile					
Davidson	5267	4095	3227	2536	1974
Guilford	14499	11157	8882	7143	5796
Total	19766	15252	12109	9679	7770
Non-road Mobile					
Davidson	1831	1632	1467	1275	1115
Guilford	3864	3371	2816	2350	1980
Total	5695	5003	4283	3625	3095
Total for all sectors	28359	23112	19209	16089	13600

TABLE 4—ACTUAL AND PROJECTED SO₂ EMISSIONS FROM ALL SOURCE CATEGORIES IN THE GREENSBORO AREA (TPY)

County	2008	2011	2014	2017	2021
Point					
Davidson	286	289	292	295	299
Guilford	449	451	453	455	458
Total	735	740	745	750	757
Area					
Davidson	983	838	692	548	353
Guilford	4129	3905	3683	3460	3164
Total	5112	4743	4375	4008	3517
On-road Mobile					
Davidson	36	19	17	18	18
Guilford	111	62	55	59	63

TABLE 4—ACTUAL AND PROJECTED SO₂ EMISSIONS FROM ALL SOURCE CATEGORIES IN THE GREENSBORO AREA (TPY)—Continued

County	2008	2011	2014	2017	2021
Total	147	81	72	77	81
Non-road Mobile					
Davidson	25	17	2	2	2
Guilford	96	51	42	42	43
Total	121	68	44	44	45
Total for all sectors	6115	5632	5236	4879	4400

TABLE 5—ACTUAL AND PROJECTED DIRECT PM_{2.5} EMISSIONS FROM ALL SOURCE CATEGORIES IN THE GREENSBORO AREA (TPY)

County	2008	2011	2014	2017	2021
Point					
Davidson	179	178	177	176	175
Guilford	62	62	62	63	63
Total	241	240	239	239	238
Area					
Davidson	1071	1028	979	937	857
Guilford	697	663	623	590	524
Total	1768	1691	1602	1527	1381
On-road Mobile					
Davidson	169	121	97	77	60
Guilford	465	330	272	221	183
Total	634	451	369	298	243
Non-road Mobile					
Davidson	71	67	58	46	40
Guilford	264	252	220	186	157
Total	335	319	278	232	197
Total for all sectors	2978	2701	2488	2296	2059

TABLE 6—EMISSIONS AND MAINTENANCE SUMMARY FOR THE GREENSBORO PM_{2.5} NONATTAINMENT AREA

Year	NO _x (tpy)	SO ₂ (tpy)	PM _{2.5} (tpy)
2008	28,359	6,115	2,978
2011	23,112	5,632	2,701
2014	19,209	5,236	2,488
2017	16,089	4,879	2,296
2021	13,600	4,400	2,059
Difference from 2008 to 2021	-14,759	-1,715	-919

Tables 3 through 6 summarize the 2008 and future projected emissions of direct PM_{2.5} and precursors from the counties in the Greensboro Area. In situations where local emissions are the primary contributor to nonattainment, the ambient air quality standard should not be violated in the future as long as emissions from within the

nonattainment area remain at or below the baseline with which attainment was achieved. In the Greensboro Area, however, the preponderance of the nonattainment problem is due to SO₂ emissions from power plants outside the nonattainment area, but within North Carolina. As shown by the speciation

data in the State's submittal,⁹ sulfates are one of the largest contributors to ambient PM_{2.5} in the Greensboro Area and in the State as a whole, contributing about 30 percent of the total PM_{2.5} mass. Sulfates are formed through various SO₂ reactions in the atmosphere. According

⁹ SIP submittal figures 2-2 and 4-1.

to EPA's National Emissions Inventory for 2005 and Clean Air Markets Division acid rain database, over 90 percent of SO₂ emissions in North Carolina were from stationary point sources, greater than 80 percent of which were from power plants reporting to the acid rain program.¹⁰ Organic carbon, which also contributes about 30 percent of the total PM_{2.5} mass in the Greensboro Area, is predominately attributed to biogenic emission sources. The next largest contributor in the Greensboro Area is an "other" group that is attributed to water, sea salts, and other trace materials and which accounts for about 17 percent of the mass.

Because the most significant sources contributing to ambient PM_{2.5} levels in the Greensboro Area are utilities located outside the nonattainment area, but within North Carolina, reductions in emissions from these point sources provide the greatest potential for reductions in ambient PM_{2.5} concentrations. For this reason, the State presented information in its submittal (as discussed above in the section on permanent and enforceable reductions), showing that the NCCSA requires these sources to reduce their emissions by substantial amounts that are more than sufficient for the Greensboro Area to demonstrate attainment and maintenance of the PM_{2.5} NAAQS at issue here. EPA has proposed rulemaking action to approve specific provisions of the NCCSA into the North Carolina SIP, and final approval would assure that power plants within North Carolina will remain sufficiently regulated to provide for continued maintenance as required by CAA section 175A.

With regard to emissions generated outside North Carolina which have the potential to impact the Greensboro Area, EPA notes several recent emissions reductions that have occurred or will occur in nearby states. First, On April 14, 2011, EPA announced a settlement with the Tennessee Valley Authority (TVA) to resolve alleged Clean Air Act violations at 11 of its coal-fired plants in Alabama, Kentucky, and Tennessee.¹¹ The settlement will require TVA to invest a TVA estimated \$3 billion to \$5 billion on new and upgraded state-of-the-art pollution

controls. When fully implemented, the pollution controls and other required actions will address 92 percent of TVA's coal-fired power plant capacity, reducing emissions of NO_x by 69 percent and SO₂ by 67 percent from TVA's 2008 emission levels. The settlement will also significantly reduce particulate matter and carbon dioxide (CO₂) emissions. The consent decree also requires that operation of 18 coal-fired units at the Johnsonville, John Sevier, and Widows Creek plants be phased out by 2017.

Second, the State of Georgia has recently passed a multi-pollutant rule to reduce NO_x and SO₂ emissions from many of its coal-fired EGUs.¹² Third, the consent decrees for Dominion Power¹³ and American Electric Power (AEP)¹⁴ in the Commonwealth of Virginia require further controls of NO_x and SO₂ emissions at those power plants. On April 21, 2003, the Department of Justice and EPA announced a settlement against Virginia Electric and Power Company (VEPCO a subsidiary of Dominion Resources, Inc.). This settlement requires VEPCO, one of the nation's largest coal-fired electric utilities, to install new pollution control equipment and to upgrade existing controls on several units in its system, thus resulting in substantial air pollution reductions. The settlement covers eight VEPCO plants, six in Virginia and two in West Virginia, comprising twenty electricity-generating units. These eight plants emitted over 350,000 tons of SO₂ and NO_x in 2000. The settlement will reduce these emissions to approximately 86,500 tpy SO₂ and 26,000 tpy NO_x. On October 9, 2007, the United States, along with eight individual states and thirteen citizen groups, announced a settlement agreement with AEP that mandates emissions reductions at sixteen of AEP's coal-fired power plants (46 units) located in Indiana, Kentucky, Ohio, Virginia, and West Virginia. NO_x emissions from subject plants will be reduced by greater than 68 percent by 2016 as compared to 2006 levels. Likewise, by 2018 SO₂ emissions will

decrease by greater than 78 percent as compared to 2006 levels.

Finally, EPA has recently finalized the CSAPR to regulate interstate transport of power plant emissions. EPA's modeling for the final rule indicates that the Greensboro Area would maintain the NAAQS into the future in the absence of the rule. The 2012 base case run, which simulates air quality without CAIR and without a transport rule, assumes a 4 million ton increase in SO₂ regionally. A 2014 base case run also assumes no CAIR, but does include additional enforceable controls that are required to occur between 2012 and 2014. Based on these modeling assessments, PM_{2.5} concentrations in the Greensboro Area are still projected to decrease to 13.5 µg/m³ in 2012 and 13.1 µg/m³ in 2014. Though not necessary for demonstrating attainment and maintenance in the Greensboro Area, the final CSAPR will result in additional reductions of NO_x and SO₂ emissions that cross state lines. EPA estimates that by 2014, power plants in the covered states will reduce annual emissions of SO₂ by about 2.2 million tons beyond what would have been achieved at that time under CAIR. By 2014, we estimate that NO_x emissions in covered states will be about 500,000 tons lower than emissions would have been under CAIR.

Based on the analysis described above, EPA has concluded that impacts on air quality from emissions transported across State lines have been adequately addressed for the Greensboro Area and that the Greensboro Area will maintain the annual PM_{2.5} standard through 2021. Furthermore, the final CSAPR mandates even greater reductions than have already occurred and, more importantly, any reductions in PM_{2.5} in the Greensboro Area from the final CSAPR will be in excess of those needed to maintain the Annual PM_{2.5} NAAQS.

A maintenance plan requires the State to show that projected future year emissions will not exceed the level of emissions which led the Area to attain the NAAQS. North Carolina has projected emissions as described previously and determined that emissions in the Greensboro Area will remain below those in the attainment year inventory until 2021.

As discussed further in section VII of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the

¹² Georgia Rule 391-3-1-.02(2)(uuu), "SO₂ Emissions from Electric Utility Steam Generating Units," was first adopted by the Georgia Board of Natural Resources January 28, 2009, with an amendment adopted June 24, 2009.

¹³ U.S. et al v. Va. Elec. & Power Co., No. 1:03-cv-00517-LMB (E.D. Va. 2003) (Consent Decree), available at <http://www.epa.gov/compliance/resources/decrees/civil/coo/vepcocd.pdf>.

¹⁴ U.S. et al v. American Elec. Power Serv. Corp., No C2-99-1250 (E.D. Ohio 2007) (Consent Decree), available at <http://www.epa.gov/compliance/resources/decrees/civil/coo/americonelctricpower-cd.pdf>.

¹⁰ EPA's National Emissions Inventory data is available on the Web site: <http://www.epo.gov/ttn/chief/eiinformation.html>. The acid rain database can be accessed on EPA's Clean Air Markets Division Web site: <http://www.epo.gov/oirmarkets/>

¹¹ *Alobamo et al. v. TVA*, No. 3:11-CV-00170, (E.D. TN 2011) (Consent Decree), available at <http://www.epo.gov/compliance/resources/decrees/civil/coo/tvocool-fired-cd.pdf>.

Area met the NAAQS. North Carolina has decided to allocate a portion of the available safety margin to the Area's PM_{2.5} and NO_x MVEBs for 2011 and 2021 for the Greensboro Area and has calculated the safety margin in its submittal. Specifically, a total of 1,383,638 kg/year (1,525 tpy)¹⁵ and 1,409,764 kg/year (1,554 tpy) of the available NO_x safety margins are allocated to the 2011 and 2021 MVEB, respectively. For PM_{2.5}, a total of 166,014 kg/year (183 tpy) and 354,708 kg/year (391 tpy) of the 2011 and 2010 safety margins were added to the Greensboro MVEBs. The remaining safety margins for NO_x are 3,722 tpy and 13,205 tpy for 2011 and 2021, respectively. The remaining safety margins for PM_{2.5} are 94 tpy and 528 tpy for 2011 and 2021, respectively. This allocation and the resulting available safety margin for the Greensboro Area are discussed further in section VII of this proposed rulemaking.

d. Monitoring Network

There are currently three monitors measuring PM_{2.5} in the Greensboro Area. The State of North Carolina, through DAQ, has committed to continue operation of the monitors in the Greensboro Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved North Carolina's 2010 monitoring plan on September 22, 2010.

e. Verification of Continued Attainment

The State of North Carolina, through DAQ, has the legal authority to enforce and implement the requirements of the Greensboro Area 1997 Annual PM_{2.5} Maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future PM_{2.5} attainment problems.

DAQ will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the Greensboro Area using the latest emissions factors, models and methodologies. For these periodic inventories, DAQ will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, the DAQ will re-project emissions for the Greensboro Area.

f. Contingency Measures in the Maintenance Plan

The contingency measures are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the State. A State should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a State will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the December 18, 2009, submittal, North Carolina affirms that all programs instituted by the State and EPA for PM control will remain enforceable and that sources are prohibited from reducing emissions controls following the redesignation of the Area. The contingency plan included in the December 18, 2009, submittal includes a 3-step triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The secondary and tertiary triggers are pre-violation triggers and thus activation does not necessarily mean a violation of the actual annual PM_{2.5} NAAQS has occurred or will occur. The pre-violation triggers allow the State to begin evaluating the causes of increased ambient PM_{2.5} concentrations and take corrective action to prevent a future violation. In the contingency plan, North Carolina has committed to taking action on the activation of a primary or secondary trigger. These triggers and the actions resulting from them are discussed more fully below.

The primary trigger will occur when the certified 3-year average of the average annual ambient concentration is greater than 15.0 µg/m³ at any monitor in the maintenance area. The resulting trigger date will be 60 days after the date that the State observes an annual average concentration that, when averaged with the previous two annual average PM_{2.5} concentrations, would result in a 3-year design value greater than 15.0 µg/m³. North Carolina has

identified a secondary warning trigger to occur when the State finds that the rolling twelve-quarter average monitored PM_{2.5} levels exceed the PM_{2.5} NAAQS in the Greensboro Area (non-calendar year basis). The trigger date will be 60 days from the date that the State observes that the rolling 12-quarter average is greater than 15.0 µg/m³. A tertiary (third type of) trigger will be activated when a monitor in the Greensboro Area has an annual average greater than 15.0 µg/m³. In addition to the triggers indicated above, North Carolina will track regional emissions submitted annually for large sources or every three years for other sources through the Consolidated Emissions Reporting Rule and Air Emissions Reporting Rule and compare them to the projected inventories and attainment year inventory. North Carolina commits to review these emissions inventories and evaluate assumptions made to project emissions in the maintenance plan to determine if unexpected growth in NO_x, SO₂ or PM_{2.5} in the Area will jeopardize maintenance of the 1997 Annual PM_{2.5} NAAQS.

Once a primary or secondary trigger is activated, DAQ will commence analysis, including trajectory analysis, and emissions inventory assessment to determine emission control measures that will be required to attain or maintain the 1997 Annual PM_{2.5} NAAQS. PM_{2.5} speciation data from the speciation trends network monitors will also be reviewed to help determine which control measures would be most effective. If it is determined that the violation or exceedance of the PM_{2.5} NAAQS is due to sources outside of North Carolina, then DAQ will consult with EPA on its findings and determinations on what contingency measures will be implemented to reduce emissions. If EPA and DAQ agree that the violation or exceedance was due to sources outside of North Carolina, DAQ will consult with regulatory authorities from contributing up-wind sources to determine additional actions to be implemented.¹⁶

If DAQ determines that a violation or exceedance occurred due to sources within North Carolina, then by November 1 of the year following the year which caused the primary or secondary trigger activation, the State

¹⁵ Conversion factor from grams to tons = 907,185 grams per ton.

¹⁶ In a letter dated May 20, 2011, North Carolina provided additional clarification on the timing and content of their contingency plan. In the letter, North Carolina clarified that it is their intent to take corrective measures to address a violation of the 1997 Annual PM_{2.5} NAAQS within 18-24 months of the violation. This letter is available in the docket EPA-R04-OAR-2009-1011 on the <http://www.regulations.gov> Web site.

will complete sufficient analysis to begin adoption of necessary rules for ensuring attainment and maintenance of the annual PM_{2.5} NAAQS. If the rules are still needed, they would become State effective within 7 months after the November 1 analysis (by the following July 1), unless legislative review is required. Each adopted rule will include a schedule that will require compliance with the rule no later than 2 years after adoption of the rule.

At least one of the following contingency measures will be adopted and implemented upon a primary or secondary triggering event:

- Continued implementation of previously adopted controls (NCCSA and diesel retrofits) which have not yet been realized but are sufficient to address the violation (and in excess of emissions reductions considered for maintenance);
- Reasonably Available Control Technology on stationary sources in the Greensboro Area;
- Diesel inspection and maintenance program;¹⁷
- Implementation of diesel retrofit programs, including incentives for performing retrofits;
- Additional controls in upwind areas within North Carolina.

When a tertiary trigger is activated, DAQ will commence analyses including meteorological evaluation, trajectory analyses, and emissions inventory assessment to understand why an annual exceedance of the standard has occurred. DAQ will work with the local air awareness program and develop an outreach plan to identify any additional voluntary measures that can be implemented and implement the plan during the following summer.

As designed, a tertiary trigger will always occur before a primary trigger because it is based on an annual average, whereas the primary trigger is based on an average of three consecutive annual averages. This means DAQ will commence analyzing the cause of higher ambient PM_{2.5} levels in the Area well before an actual NAAQS violation occurs. Further, a secondary trigger is likely to occur before a primary trigger

¹⁷ At this time, there is not an approved method for determining emission reductions from a Diesel Inspection and Maintenance program. Therefore, there is no technical basis to award emission credits for a heavy duty diesel inspection and maintenance program in the SIP. However, we do not want to preclude future technical changes that may make awarding such emission credits possible. If it is necessary to implement contingency measures for this area, North Carolina, in coordination with EPA, will evaluate the feasibility of this program as a contingency measure at that time. If a technical basis for emission credits is not available, other contingency measures will need to be implemented.

because it is determined at the end of each calendar quarter based on a rolling 12-quarter average. This means that if the Area were to experience a NAAQS violation, DAQ will have likely already commenced the process for adoption of control measures as described above. EPA is now making the preliminary determination that the contingency measures outlined above in North Carolina's contingency plan are adequate and ensure that the State will promptly correct any future violation of the 1997 Annual PM_{2.5} NAAQS in the Greensboro Area.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Provided that EPA takes final rulemaking to approve the NCCSA, the maintenance plan SIP revision submitted by the State of North Carolina for the Greensboro Area meets the requirements of section 175A of the CAA and is approvable.

VII. What is EPA's analysis of North Carolina's proposed PM_{2.5} and NO_x MVEBs for the Greensboro area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must "conform" to (*i.e.*, be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and

attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Greensboro Area, North Carolina has elected to develop separate MVEBs for PM_{2.5} and NO_x for each of the two counties in the Greensboro Area. North Carolina developed these MVEBs, as required, for the last year of its maintenance plan—2021. Additionally, the State of North Carolina has elected to develop MVEBs for the year 2011. The MVEBs reflect the total on-road emissions for 2011 and 2021, plus a safety margin that is based on an allocation from the available PM_{2.5} and NO_x safety margin. Under 40 CFR 93.101, the safety margin is the difference between the emissions level needed for attainment (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector, however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were calculated to account for uncertainties in population growth, changes in modeled vehicle miles traveled and new emission factor models. The PM_{2.5} and NO_x MVEBs for both Davison and Guilford Counties in the Greensboro Area are defined in Tables 7 and 8 below.

TABLE 7—DAVIDSON COUNTY MVEBS (KG/YEAR)

	2011	2021
NO_x Emissions (kg/year)		
On-road Mobile Emissions	3,714,921	1,790,782

TABLE 7—DAVIDSON COUNTY MVEBS (KG/YEAR)—Continued

	2011	2021
Safety Margin Allocated to MVEB	371,492	358,156
NO _x Conformity MVEB	4,086,413	2,148,938
PM_{2.5} Emissions (kg/year)		
On-road Mobile Emissions	109,769	54,431
Safety Margin Allocated to MVEB	43,544	98,882
PM _{2.5} Conformity MVEB	153,313	153,313

TABLE 8—GUILFORD COUNTY MVEBS (KG/YEAR)

	2011	2021
NO_x Emissions (kg/year)		
On-road Mobile Emissions	10,121,459	5,258,042
Safety Margin Allocated to MVEB	1,012,146	1,051,608
NO _x Conformity MVEB	11,133,605	6,309,650
PM_{2.5} Emissions (kg/year)		
On-road Mobile Emissions	299,371	166,015
Safety Margin Allocated to MVEB	122,470	255,826
PM _{2.5} Conformity MVEB	421,841	421,841

As mentioned above, the Greensboro Area has chosen to allocate a portion of the available safety margin to the PM_{2.5} and NO_x MVEBs for the years 2011 and 2021. A total of 1,383,638 kg/year (1,525 tpy) and 1,409,764 kg/year (1,554 tpy) of the available NO_x safety margins are allocated to the 2011 and 2021 MVEB, respectively. For PM_{2.5}, a total of 166,014 kg/year (183 tpy) and 354,708 kg/year (391 tpy) of the 2011 and 2021 safety margins are added to the Greensboro MVEBs. Thus, the remaining safety margins in 2011 and 2021 for PM_{2.5} are 94 tpy and 528 tpy, respectively. For NO_x, the remaining 2011 and 2021 safety margins are 3,722 tpy and 13,205 tpy, respectively.

Through this rulemaking, EPA is proposing to approve the MVEBs for PM_{2.5} and NO_x for 2011 and 2021, including the allocation from the PM_{2.5} and NO_x safety margins, for the Greensboro Area because EPA has made the preliminary determination that the Area maintains the 1997 Annual PM_{2.5}

NAAQS with the emissions at the levels of the budgets. Once the MVEBs for Davidson and Guilford Counties in the Greensboro Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations and the metropolitan planning organizations must use the MOVES model in future PM_{2.5} conformity determinations for their long-range transportation plans and transportation improvement programs. After thorough review, EPA has determined that the budgets meet the adequacy criteria, as outlined in 40 CFR 93.118(e)(4), and is proposing to approve the budgets because they are consistent with maintenance of the Annual PM_{2.5} NAAQS through 2021.

VIII. What is the status of EPA's adequacy determination for the proposed PM_{2.5} and NO_x MVEBs for 2011 and 2021 for the Greensboro area?

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and

Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, North Carolina's maintenance plan submission includes PM_{2.5} and NO_x MVEBs for both counties that comprise the Greensboro Area for the years 2011 and 2021. EPA reviewed both the PM_{2.5} and NO_x MVEBs through the adequacy process. The North Carolina SIP submission, including the Greensboro Area PM_{2.5} and NO_x MVEBs, was open for public comment on EPA's adequacy Web site on November 23, 2010, found at: <http://www.epa.gov/otaq/stateresources/transconf/currpsip.htm>. The EPA public comment period on adequacy of the PM_{2.5} and NO_x MVEBs for 2011 and 2021 for Greensboro Area closed on December 23, 2010. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal.

In a letter sent on February 2, 2011, EPA notified North Carolina DAQ that the MOVES based sub-area 2011 and 2021 MVEBs for the Greensboro Area were determined to be adequate for transportation conformity purposes. On May 2, 2011, EPA published its adequacy notice in the *Federal Register* (76 FR 24472). When EPA finds the 2011 and 2021 MVEBs adequate or approves them, the new MVEBs for PM_{2.5} and NO_x must be used for future transportation conformity determinations. For required regional emissions analysis years prior to 2011, the applicable budgets are the 2009 MVEBs from the attainment demonstration, which have already been found adequate through another action. (75 FR 9204 and 75 FR 26751). For required regional emissions analysis years that involve 2011–2020, the applicable budgets will be the new 2011 MVEBs. For required regional emissions analysis years that involve 2021 or beyond, the applicable budgets will be the new 2021 MVEBs. The 2011 and 2021 MVEBs are defined in section VII of this proposed rulemaking.

IX. What is EPA's analysis of the proposed 2008 base year emissions inventory for the Greensboro area?

As discussed in section VI above, section 172(c)(3) of the CAA requires areas to submit a comprehensive, accurate and current emissions inventory. As part of North Carolina's request to redesignate the Greensboro Area, the State submitted a 2008 base year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. All emission summaries

were accompanied by source-specific descriptions of emission calculation procedures and sources of input data. On December 22, 2010, DAQ provided EPA with a supplemental SIP revision to update the on-road mobile emissions

by replacing the on-road mobile emissions that were prepared with MOBILE6.2 with on-road emissions that were prepared using the new MOVES emissions model. North Carolina's submittal documents 2008 emissions in

the Greensboro Area in units of tpy. Table 9 below provides a summary of the 2008 emissions of direct PM_{2.5}, NO_x, and SO₂ for the Greensboro Area. For emissions in other years, refer to Tables 3 through 5.

TABLE 9—GREENSBORO AREA 2008 EMISSIONS FOR PM_{2.5}, NO_x, AND SO₂ (TPY [PERCENT TOTAL])

Source	PM _{2.5}	NO _x	SO ₂
Point Source Total	241 [8.1]	1,072 [3.8]	735 [12.0]
Area Source Total	1,768 [59.4]	1,826 [6.4]	5,112 [83.6]
On-Road Mobile Source Total	634 [21.3]	19,766 [69.7]	147 [2.4]
Non-Road Mobile Source Total	335 [11.2]	5,695 [20.1]	121 [2.0]
Total for all Sources	2,978	28,359	6,115

In today's notice, EPA is proposing to approve this 2008 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

X. Proposed Actions on the Redesignation Request and Maintenance Plan SIP Revisions Including Approval of the PM_{2.5} and NO_x MVEBs for 2011 and 2021 for the Greensboro Area

EPA previously determined that the Greensboro Area was attaining the 1997 PM_{2.5} NAAQS on January 4, 2010, at 75 FR 54. EPA is now taking four separate but related actions regarding the Area's redesignation and maintenance of the 1997 Annual PM_{2.5} NAAQS. Three of the actions are discussed in this section and the fourth is discussed in the next section.

First, EPA is proposing to determine, based on complete, quality-assured and certified monitoring data for the 2007–2009 monitoring period, and after review of preliminary data in AQS for 2008–2010, that the Greensboro Area continues to attain the 1997 Annual PM_{2.5} NAAQS. Provided that EPA takes final action to approve the NCSSA and, under section 172(c)(3), the 2008 base emissions inventory, EPA is proposing to determine that the Greensboro Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 1997 Annual PM_{2.5} NAAQS. On this basis, EPA is proposing to approve North Carolina's redesignation request for the Greensboro Area.

Second, EPA is proposing to approve North Carolina's 2008 emissions inventory for the Greensboro Area (under section CAA 172(c)(3)). North Carolina selected 2008 as the attainment emissions inventory year for the Greensboro Area. This attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 Annual PM_{2.5} NAAQS and also is

a current, comprehensive inventory that meets the requirements of section 172(c)(3).

Third, subject to final approval of the NCCSA rules, EPA is proposing to approve the maintenance plan for the Greensboro Area, including the PM_{2.5} and NO_x MVEBs for 2011 and 2021 submitted by North Carolina for the Greensboro Area, as meeting the requirements of section 175A of the CAA. The maintenance plan demonstrates that the Area will continue to maintain the 1997 Annual PM_{2.5} NAAQS, and the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today's action, EPA is describing the status of its adequacy determination for the PM_{2.5} and NO_x MVEBs for 2011 and 2021 in accordance with 40 CFR 93.118(f)(1). On May 2, 2011, EPA published its adequacy notice in the *Federal Register* (76 FR 24472). Within 24 months from the effective date of EPA's adequacy determination, the transportation partners will need to demonstrate conformity to the new PM_{2.5} and NO_x MVEBs pursuant to 40 CFR 93.104(e).

If finalized, approval of the redesignation request would change the official designations of Davidson and Guilford Counties in the Greensboro Area for the 1997 Annual PM_{2.5} NAAQS, found at 40 CFR part 81, from nonattainment to attainment. EPA is also proposing to approve into the North Carolina SIP the maintenance plan for the Greensboro Area, the emissions inventory submitted with the maintenance plan, and the 2011 and 2021 MVEBs. EPA is proposing to take these actions if and when EPA finalizes, after notice and comment rulemaking, its approval of the NCSSA rules as a revision to the North Carolina SIP.

XI. Proposed Action on the Determination That the Greensboro Area Has Attained the 1997 PM_{2.5} NAAQS by Its Applicable Attainment Date

The fourth action EPA is proposing today is to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Greensboro Area attained the 1997 Annual PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010. This determination is being proposed in accordance with section 179(c)(1) of the CAA and EPA regulations.

XII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these proposed actions:

- Are not "significant regulatory action[s]" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, and Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: September 2, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011-24644 Filed 9-23-11; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-B-1216]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 27, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1216, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) luis.rodriguez1@dhs.gov.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) luis.rodriguez1@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency

(FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*;
Reorganization Plan No. 3 of 1978, 3 CFR,
1978 Comp., p. 329; E.O. 12127, 44 FR 19367,
3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the
authority of § 67.4 are proposed to be
amended as follows:

State	City/town/county.	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Cross County, Arkansas					
Arkansas	Unincorporated Areas of Cross County.	Turkey Creek	Approximately 0.48 mile downstream of State Highway 64.	None	+256
			Approximately 400 feet upstream of State Highway 1.	None	+258
			At the upstream side of Gibbs Road	None	+259
			Approximately 1,295 feet upstream of Gibbs Road.	None	+268

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES**Unincorporated Areas of Cross County**

Maps are available for inspection at 705 East Union Street, Wynne, AR 72396.

Unincorporated Areas of Palo Pinto County, Texas

Texas	Unincorporated Areas of Palo Pinto County.	Pollard Creek Tributary No. 2.	Approximately 140 feet downstream of 2nd Street.	None	+879
			Approximately 1,250 feet upstream of 2nd Street.	None	+882
Texas	Unincorporated Areas of Palo Pinto County.	Rock Creek Tributary No. 2.	At the upstream side of FM 1195	None	+846
			Approximately 0.64 mile downstream of Garrett Morris Parkway.	None	+858

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES**Unincorporated Areas of Palo Pinto County**

Maps are available for inspection at the Palo Pinto County Courthouse, 520 Oak Street, Palo Pinto, TX 76484.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Maricopa County, Arizona, and Incorporated Areas				
Bonita Dike Channel	Approximately 100 feet upstream of the Wash 13 East confluence.	None	+1409	Unincorporated Areas of Maricopa County.
	Approximately 1,500 feet upstream of the Wash 13 East confluence.	None	+1418	
Camp Creek Tributary A	At the downstream limit of detailed study	None	+2249	City of Scottsdale, Unincorporated Areas of Maricopa County.
Camp Creek Tributary A1	Approximately 1,300 feet upstream of 136th Avenue ..	None	+2717	Unincorporated Areas of Maricopa County.
	Approximately 500 feet upstream of the Camp Creek Tributary A confluence.	None	+2325	
Camp Creek Tributary A2	Approximately 1.0 mile upstream of the Camp Creek Tributary A confluence.	None	+2492	Unincorporated Areas of Maricopa County.
	Approximately 300 feet upstream of the Camp Creek Tributary A confluence.	None	+2517	
Camp Creek Tributary B	Approximately 400 feet upstream of Hawknest Road	None	+2599	City of Scottsdale, Unincorporated Areas of Maricopa County.
	At the downstream limit of detailed study	None	+2263	
Camp Creek Tributary B1	Approximately 0.9 mile upstream of 136th Avenue	None	+2816	Unincorporated Areas of Maricopa County.
	Approximately 600 feet upstream of the Camp Creek Tributary B confluence.	None	+2366	
Camp Creek Tributary B2	Approximately 1.4 miles upstream of the Camp Creek Tributary B confluence.	None	+2598	Unincorporated Areas of Maricopa County.
	Approximately 600 feet upstream of the Camp Creek Tributary B confluence.	None	+2612	
Camp Creek Tributary B3	Approximately 1.0 mile upstream of the Camp Creek Tributary B confluence.	None	+2746	Unincorporated Areas of Maricopa County.
	At the downstream limit of detailed study	None	+2443	
Camp Creek Tributary C	Approximately 0.9 mile upstream of the Camp Creek Tributary C3 confluence.	None	+2996	Unincorporated Areas of Maricopa County.
	Approximately 500 feet upstream of the Camp Creek Tributary C confluence.	None	+2558	
Camp Creek Tributary C1	Approximately 1.3 miles upstream of the Camp Creek Tributary C confluence.	None	+2857	Unincorporated Areas of Maricopa County.
	Approximately 400 feet upstream of the Camp Creek Tributary C confluence.	None	+2767	
Camp Creek Tributary C2	Approximately 1.0 mile upstream of the Camp Creek Tributary C confluence.	None	+2937	Unincorporated Areas of Maricopa County.
	Approximately 700 feet upstream of the Camp Creek Tributary C confluence.	None	+2881	
Camp Creek Tributary C3	Approximately 0.7 mile upstream of the Camp Creek Tributary C confluence.	None	+2997	Unincorporated Areas of Maricopa County.
	Approximately 600 feet upstream of the Camp Creek Tributary C confluence.	None	+2473	
Camp Creek Tributary D	Approximately 0.6 mile upstream of the Camp Creek Tributary C confluence.	None	+2605	Unincorporated Areas of Maricopa County.
	Approximately 1.2 miles downstream of Black Mountain Road.	None	+1782	
Circle City Area Wash 1	At the upstream side of Black Mountain Road	+1847	+1846	Unincorporated Areas of Maricopa County.
	At the downstream limit of detailed study	None	+2495	
Fan 6A	At the upstream limit of detailed study	None	+2542	City of Scottsdale.
Fan 6A North	Approximately 500 feet downstream of Preserve Way	None	+2542	City of Scottsdale.
	Approximately 500 feet upstream of North Boulder View Drive.	None	+3059	
Fan 6A South	Approximately 700 feet downstream of Preserve Way	None	+2549	City of Scottsdale.
	Approximately 1,100 feet upstream of East Stagecoach Pass Road.	None	+2843	
Fan 6C	Approximately 400 feet upstream of East Dove Valley Road.	None	+2390	City of Scottsdale.
Fan 6C North Branch	Approximately 700 feet upstream of North Legend Trail Parkway.	None	+2654	City of Scottsdale.
	Approximately 300 feet downstream of North 84th Street.	None	+2407	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Iona Wash	Approximately 1,300 feet upstream of North 84th Street.	None	+2452	Town of Surprise, Unincorporated Areas of Maricopa County.
	Approximately 0.4 mile upstream of the Central Arizona Project Canal.	+1558	+1555	
Iona Wash East	Approximately 2.1 miles upstream of U.S. Route 60 ...	None	+2039	Town of Surprise.
	Approximately 1,400 feet downstream of Deer Valley Road.	None	+1464	
Iona Wash East Split 1	Approximately 1.3 miles upstream of Pinnacle Peak Road.	None	+1544	Unincorporated Areas of Maricopa County.
	Approximately 1,000 feet upstream of the Trilby Wash confluence.	None	+1612	
Iona Wash East Split 2	At the Iona Wash divergence	None	+1824	Town of Surprise, Unincorporated Areas of Maricopa County.
	Approximately 1,900 feet upstream of the Iona Wash confluence.	None	+1556	
Iona Wash North West Split 1.	At the Iona Wash divergence	None	+1615	Unincorporated Areas of Maricopa County.
	Approximately 500 feet upstream of the Iona Wash confluence.	None	+2007	
Iona Wash West	At the Iona Wash divergence	None	+2033	Town of Surprise.
	Approximately 0.6 mile downstream of Deer Valley Road.	None	+1461	
Jackrabbit Wash	At the Iona Wash East divergence	None	+1523	Town of Buckeye, Unincorporated Areas of Maricopa County.
	At the Hassayampa River confluence	None	+1113	
Multiple Shallow Flooding Sources.	Approximately 900 feet upstream of the Central Arizona Project Canal.	+1369	+1372	Unincorporated Areas of Maricopa County.
	At the upstream side of I-10	None	+1394	
Multiple Shallow Flooding Sources.	At the upstream side of the Central Arizona Project Canal.	None	+1532	City of Peoria.
New River West Tributary 10	Approximately 0.5 mile upstream of the New River confluence.	None	+1497	City of Peoria, City of Phoenix, Unincorporated Areas of Maricopa County.
New River West Tributary 15	Approximately 0.4 mile upstream of Lake Pleasant Road.	None	+1598	City of Peoria, City of Phoenix.
	Approximately 0.5 mile upstream of the New River confluence.	None	+1500	
New River West Tributary 20	At the upstream limit of detailed study	None	+1572	City of Peoria, City of Phoenix.
	Approximately 0.5 mile downstream of Old Carefree Highway.	None	+1537	
New River West Tributary 20 Tributary 10.	Approximately 0.6 mile upstream of New River Road	None	+1653	City of Peoria, City of Phoenix.
	Approximately 400 feet upstream of the New River West Tributary 20 confluence.	None	+1573	
New River West Tributary 20 Tributary 5.	Approximately 0.4 mile upstream of New River Road	None	+1622	City of Peoria.
	Approximately 400 feet upstream of the New River West Tributary 20 Tributary 10 confluence.	None	+1590	
New River West Tributary 25	Approximately 0.4 mile upstream of New River Road	None	+1618	City of Peoria, City of Phoenix.
	Approximately 2,000 feet upstream of the New River confluence.	None	+1554	
New River West Tributary 30	Approximately 1.2 miles upstream of the New River confluence.	None	+1598	City of Peoria, City of Phoenix.
	Approximately 1,000 feet upstream of the New River West Split confluence.	None	+1569	
New River West Tributary 35	Approximately 700 feet upstream of New River Road	None	+1675	City of Phoenix.
	Approximately 600 feet upstream of the New River West Split confluence.	None	+1585	
New River West Tributary 40	Approximately 1.0 mile upstream of the New River West Split confluence.	None	+1643	City of Peoria, City of Phoenix.
	Approximately 1,000 feet upstream of the Sweat Canyon Wash confluence.	None	+1625	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
		None	+1663	
New River West Tributary 45	Approximately 0.7 mile upstream of the Sweat Canyon Wash confluence.	None	+1639	City of Peoria, City of Phoenix.
	Approximately 500 feet upstream of the Sweat Canyon Wash confluence.	None	+1707	
New River West Tributary 5	Approximately 1,800 feet upstream of New River Road.	None	+1482	City of Peoria.
	Approximately 0.6 mile upstream of the New River confluence.	None	+1608	
New River West Tributary 50	Approximately 0.7 mile upstream of Old Carefree Highway.	None	+1646	City of Peoria, City of Phoenix.
	Approximately 600 feet upstream of the Sweat Canyon Wash confluence.	None	+1731	
New River West Tributary 50 Tributary 5.	Approximately 0.4 mile upstream of New River Road	None	+1677	City of Peoria, City of Phoenix.
	Approximately 200 feet upstream of the New River West Tributary 50 confluence.	None	+1730	
New River West Tributary 55	Approximately 0.5 mile upstream of New River Road	None	+1657	City of Phoenix.
	Approximately 560 feet downstream of New River Road.	None	+1784	
New River West Tributary 55 Tributary 10.	At the upstream limit of detailed study	None	+1665	City of Peoria, City of Phoenix.
	Approximately 700 feet upstream of the New River West Tributary 55 confluence.	None	+1916	
New River West Tributary 55 Tributary 15.	Approximately 1.8 miles upstream of the New River West Tributary 55 Tributary 5 confluence.	None	+1688	City of Peoria, City of Phoenix.
	At the New River West Tributary 55 confluence	None	+1882	
New River West Tributary 55 Tributary 20.	Approximately 1.4 miles upstream of KV Power Road	None	+1708	City of Phoenix.
	Approximately 400 feet upstream of the New River West Tributary 55 confluence.	None	+1747	
New River West Tributary 55 Tributary 30.	At the upstream limit of detailed study	None	+1680	City of Phoenix.
	Approximately 600 feet upstream of the New River West Tributary 55 confluence.	None	+1714	
New River West Tributary 55 Tributary 5.	Approximately 0.5 mile upstream of Saddle Mountain Road.	None	+1735	City of Peoria.
	Approximately 600 feet upstream of the New River West Tributary 55 Tributary 10 confluence.	None	+1776	
Shallow Flooding	Approximately 0.6 mile upstream of the New River West Tributary 55 Tributary 10 confluence.	None	+1364	Unincorporated Areas of Maricopa County.
	At the upstream side of I-10	None	+1371	
Shallow Flooding	At the upstream side of I-10	None	+1375	Unincorporated Areas of Maricopa County.
	At the upstream side of I-10	None	+1382	
Shallow Flooding	At the upstream side of I-10	None	+1389	Unincorporated Areas of Maricopa County.
	At the upstream side of I-10	None	+1393	
Shallow Flooding	At the upstream side of I-10	None	#1	Unincorporated Areas of Maricopa County.
	At 243rd Avenue	None	+1531	
Shallow Flooding	At the upstream side of the Central Arizona Project Canal.	None	+1545	Town of Surprise.
	At the upstream side of the Central Arizona Project Canal.	None	+1550	
Shallow Flooding	At the upstream side of the Central Arizona Project Canal.	None	+1552	City of Peoria, Unincorporated Areas of Maricopa County.
	At the upstream side of the Central Arizona Project Canal.	None	+1553	
Shallow Flooding	At the upstream side of the Central Arizona Project Canal.	None	+1553	Unincorporated Areas of Maricopa County.
	At the upstream side of the Central Arizona Project Canal.	None	+1553	
Shallow Flooding	At the upstream side of the Central Arizona Project Canal.	None	+1553	Town of Surprise.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Shallow Flooding	At the upstream side of the Central Arizona Project Canal.	None	+1555	Town of Surprise, Unincorporated Areas of Maricopa County.
Stage Coach Pass Wash	At the upstream side of Scottsdale Road	None	+2270	City of Scottsdale, Town of Carefree.
Trilby Wash	At the downstream side of North Lone Mountain Parkway.	None	+2962	Unincorporated Areas of Maricopa County.
	Approximately 1.1 miles upstream of U.S. Route 60 ...	+1920	+1921	
Upper Boulders Wash	Approximately 2.1 miles upstream of U.S. Route 60 ...	None	+1994	City of Scottsdale.
	At the downstream side of Winfield Drive	None	+2315	
	Approximately 2,000 feet upstream of North Legend Trail Parkway.	None	+2667	
Upper Fan 5	Approximately 700 feet downstream of North Pima Road.	None	+2397	City of Scottsdale.
	Approximately 2.0 miles upstream of East Seven Palms Drive.	None	+2770	
Wash 1 East	Approximately 460 feet upstream of the Wash 1 West confluence.	None	+1495	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the downstream side of the Central Arizona Project Canal.	None	+1543	
Wash 1 West	Approximately 0.5 mile downstream of West Deer Valley Road.	None	+1351	Town of Surprise, Unincorporated Areas of Maricopa County.
	Approximately 0.5 mile upstream of West Patton Road.	None	+1552	
Wash 10 East	Approximately 1.0 mile downstream of Briles Road	None	+1357	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the downstream side of the Central Arizona Project Canal.	None	+1540	
Wash 10 East Split 1	At the upstream side of Skinner Road	None	+1493	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the Wash 10 East divergence	None	+1528	
Wash 10 East Split 2	Approximately 0.8 mile downstream of Briles Road	None	+1359	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the Wash 10 East divergence	None	+1455	
Wash 11 East	Approximately 600 feet upstream of the Beardsley Canal.	None	+1348	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the downstream side of the Central Arizona Project Canal.	None	+1535	
Wash 12 East	Approximately 700 feet downstream of West Dynamite Boulevard.	None	+1440	City of Peoria, Unincorporated Areas of Maricopa County.
	At the downstream side of the Central Arizona Project Canal.	None	+1536	
Wash 12 East Split	At the Wash 12 East confluence	None	+1492	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the Wash 12 East divergence	None	+1514	
Wash 13 East	Approximately 1,400 feet downstream of Jomañ Road	None	+1372	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the downstream side of West Dynamite Boulevard	None	+1423	
Wash 14 East	At the Wash 13 East confluence	None	+1401	Unincorporated Areas of Maricopa County.
	Approximately 0.5 mile upstream of the Wash 13 East confluence.	None	+1417	
Wash 2 East (North of the Central Arizona Project Canal).	Approximately 400 feet downstream of West Lone Mountain Road.	None	+1608	Town of Surprise, Unincorporated Areas of Maricopa County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 400 feet upstream of West Dove Valley Road.	None	+1679	
Wash 2 East (South of the Central Arizona Project Canal).	Approximately 0.4 mile downstream of North Citrus Road.	None	+1391	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash 2 East Tributary	Approximately 1.3 miles upstream of U.S. Route 60 ...	None	+1536	
	Approximately 600 feet downstream of West Lone Mountain Road.	None	+1606	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash 2 West (North of the Central Arizona Project Canal).	Approximately 500 feet upstream of West Dove Valley Road.	None	+1675	
	At the upstream side of the Central Arizona Project Canal.	None	+1554	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash 2 West (South of the Central Arizona Project Canal).	Approximately 200 feet upstream of 227th Avenue	None	+1671	
	Approximately 1.6 miles downstream of West Deer Valley Road.	None	+1352	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash 2 West Tributary 1	At the downstream side of the Central Arizona Project Canal.	None	+1546	
	Approximately 1,500 feet upstream of the Wash 2 West confluence.	None	+1585	Unincorporated Areas of Maricopa County.
Wash 2 West Tributary 2	Approximately 1,300 feet upstream of West Dove Valley Road.	None	+1720	
	Approximately 0.4 mile downstream of Patton Road ...	None	+1552	Unincorporated Areas of Maricopa County.
Wash 3 East	Approximately 1,100 feet upstream of West Lone Mountain Road.	None	+1662	
	Approximately 0.6 mile downstream of West Deer Valley Road.	None	+1353	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash 3 West	At the downstream side of the Central Arizona Project Canal.	None	+1542	
	Approximately 1,900 feet downstream of 243rd Avenue.	None	+1546	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash 4 East	Approximately 2.4 miles upstream of West Patton Road.	None	+1745	
	Approximately 1,900 feet upstream of the Wash 3 East confluence.	None	+1457	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash 5 East	At the downstream side of the Central Arizona Project Canal.	None	+1545	
	At the downstream side of 163rd Avenue	None	+1390	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash 6 East	At the downstream side of the Central Arizona Project Canal.	None	+1543	
	Approximately 1,100 feet downstream of 163rd Avenue.	None	+1412	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash 6 East South	At the downstream side of the Central Arizona Project Canal.	None	+1544	
	At the downstream limit of detailed study	None	+1374	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash 7 East	At the Wash 6 East and Wash 8 East confluence	None	+1417	
	Approximately 1,000 feet upstream of the Central Arizona Project Canal.	None	+1556	Unincorporated Areas of Maricopa County.
Wash 7 East East Split	Approximately 0.8 mile upstream of the Central Arizona Project Canal.	None	+1586	
	Approximately 1,100 feet upstream of the Wash 8 East confluence.	None	+1483	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the Wash 7 East West Split divergence	None	+1530	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Wash 7 East Tributary	Approximately 1,000 feet downstream of 169th Avenue.	None	+1560	Unincorporated Areas of Maricopa County.
Wash 7 East West Split	Approximately 0.5 mile upstream of Quail Run Road	None	+1638	Town of Surprise, Unincorporated Areas of Maricopa County.
	Approximately 1,100 feet upstream of the Wash 6 East confluence.	None	+1508	
Wash 8 East	At the downstream side of the Central Arizona Project Canal.	None	+1543	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the Wash 6 East confluence	None	+1419	
Wash 9 East	Approximately 400 feet upstream of West Windstone Trail.	None	+1542	Town of Surprise, Unincorporated Areas of Maricopa County.
	Approximately 0.9 mile downstream of West Jomax Road.	None	+1376	
Wash 9 East Split	Approximately 600 feet upstream of West Windstone Trail.	None	+1540	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the Wash 9 East confluence	None	+1428	
Wash T2N-R5W-S27N	At the Wash 9 East divergence	None	+1447	Unincorporated Areas of Maricopa County.
	At the Hassayampa River confluence	None	+1056	
Wash T4N-R3W-S07W	At the Jackrabbit Wash divergence	None	+1165	Unincorporated Areas of Maricopa County.
	Approximately 1,000 feet upstream of the Wash T4N-R3W-S17 confluence.	None	+1599	
Wash T4N-R3W-S08E	Approximately 1.8 miles upstream of the Wash T4N-R3W-S17 confluence.	None	+1657	Unincorporated Areas of Maricopa County.
	Approximately 500 feet upstream of the Wash 3 West confluence.	None	+1565	
Wash T4N-R3W-S08W	Approximately 200 feet upstream of 259th Avenue	None	+1725	Unincorporated Areas of Maricopa County.
	Approximately 300 feet upstream of the Wash 3 West confluence.	None	+1576	
Wash T4N-R3W-S09W	Approximately 600 feet upstream of 255th Avenue	None	+1684	Town of Surprise, Unincorporated Areas of Maricopa County.
	Approximately 200 feet upstream of the Wash 3 West confluence.	None	+1561	
Wash T4N-R3W-S10N	At the downstream side of West Patton Road	None	+1647	Town of Surprise, Unincorporated Areas of Maricopa County.
	Approximately 1,200 feet upstream of the Central Arizona Project Canal.	None	+1554	
Wash T4N-R3W-S10W Reach 1.	At the downstream side of West Jomax Road	None	+1594	Town of Surprise.
	Approximately 1,000 feet upstream of the Central Arizona Project Canal.	None	+1545	
Wash T4N-R3W-S10W Reach 2.	Approximately 1.2 miles upstream of the Central Arizona Project Canal.	None	+1571	Town of Surprise.
	Approximately 1,200 feet upstream of the Central Arizona Project Canal.	None	+1545	
Wash T4N-R3W-S17	Approximately 0.6 mile upstream of the Central Arizona Project Canal.	None	+1556	Town of Surprise, Unincorporated Areas of Maricopa County.
	Approximately 800 feet upstream of the Wash T4N-R3W-S18W confluence.	None	+1555	
Wash T4N-R3W-S18E	Approximately 1.6 miles upstream of 251st Avenue ...	None	+1633	Town of Buckeye, Town of Surprise, Unincorporated Areas of Maricopa County.
	Approximately 1,200 feet upstream of the Wash T4N-R3W-S18W confluence.	None	+1569	
Wash T4N-R3W-S18W	Approximately 0.5 mile upstream of West Patton Road.	None	+1697	Town of Buckeye, Town of Surprise, Unincorporated Areas of Maricopa County.
	Approximately 1,800 feet downstream of 243rd Avenue.	None	+1547	
	Approximately 2.8 miles upstream of 251st Avenue ...	None	+1637	

Flooding source(s)	Location of referenced elevation **	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Wash T5N-R2W-S07	Approximately 1,200 feet upstream of the Wash T5N-R2W-S19W confluence.	None	+1735	Unincorporated Areas of Maricopa County.
	Approximately 1,800 feet upstream of West Galvin Street.	None	+1808	
Wash T5N-R2W-S19E	At the downstream limit of detailed study	None	+1602	Town of Surprise, Unincorporated Areas of Maricopa County.
Wash T5N-R2W-S19W	At the downstream side of West Dove Valley Road	None	+1694	Town of Surprise, Unincorporated Areas of Maricopa County.
	At the downstream limit of detailed study	None	+1628	
Wash T5N-R3W-S01S	At the upstream side of West Cloud Road	None	+1823	Unincorporated Areas of Maricopa County.
	Approximately 0.4 mile upstream of the Wash T5N-R2W-S07 confluence.	None	+1793	
Wash T5N-R3W-S19	At the upstream side of West Cloud Road	None	+1821	Unincorporated Areas of Maricopa County.
	Approximately 1,000 feet upstream of the Wash T4N-R3W-S08E confluence.	None	+1715	
Wash T5N-R3W-S24E	At the downstream side of West Lone Mountain Road	None	+1728	Unincorporated Areas of Maricopa County.
	At the downstream side of Wildcat Drive	None	+1632	
Wittman Wash	Approximately 1.1 miles upstream of Dove Valley Road.	None	+1760	Unincorporated Areas of Maricopa County.
	At the downstream side of the 203rd Avenue Bypass	+1555	+1554	
Wittman Wash North Split	Approximately 2.5 miles upstream of Center Street	None	+1827	Unincorporated Areas of Maricopa County.
	Approximately 200 feet upstream of the Wittman Wash confluence.	+1685	+1684	
Wittman Wash South Split	At the Wittman Wash divergence	+1699	+1697	Unincorporated Areas of Maricopa County.
	At the upstream side of the 203rd Avenue Bypass	None	+1551	
Wittman Wash Tributary	Approximately 1,200 feet upstream of West Peakview Road.	None	+1588	Unincorporated Areas of Maricopa County.
	Approximately 1,200 feet upstream of the Wittman Wash confluence.	None	+1714	
	Approximately 0.6 mile upstream of West Galvin Street.	None	+1824	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Peoria

Maps are available for inspection at 8401 West Monroe Street, Peoria, AZ 85345.

City of Phoenix

Maps are available for inspection at 200 West Washington Street, 7th Floor, Phoenix, AZ 85003.

City of Scottsdale

Maps are available for inspection at 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.

Town of Buckeye

Maps are available for inspection at 530 East Monroe Avenue, Buckeye, AZ 85326.

Town of Carefree

Maps are available for inspection at 8 Sundial Circle, Carefree, AZ 85377.

Town of Surprise

Maps are available for inspection at 16000 North Civic Center Plaza, Surprise, AZ 85374.

Unincorporated Areas of Maricopa County

Maps are available for inspection at 2801 West Durango Street, Phoenix, AZ 85003.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Iberville Parish, Louisiana, and Incorporated Areas				
Mississippi River	Approximately 1.67 miles upstream of the White Castle-Carville Ferry.	None	+38	City of Plaquemine, Town of White Castle.
	Approximately 2 miles upstream of the White Castle-Carville Ferry.	None	+38	
	Approximately 0.75 mile downstream of the Bayou Plaquemine confluence.	None	+42	
	Approximately 0.70 mile upstream of the Bayou Plaquemine confluence.	None	+42	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodríguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Plaquemine

Maps are available for inspection at 58050 Meriam Street, Plaquemine, LA 70764.

Town of White Castle

Maps are available for inspection at 32535 Bowie Street, White Castle, LA 70788.

Le Flore County, Oklahoma, and Incorporated Areas				
C Creek	At the McMurtrey Creek confluence	None	+459	City of Poteau, Unincorporated Areas of Le Flore County.
Caston Creek	At the downstream side of U.S. Route 59	None	+490	City of Poteau, Town of Wister.
	Approximately 100 feet upstream of the Poteau River confluence.	None	+463	
McMurtrey Creek	Approximately 1,775 feet upstream of U.S. Route 270	None	+467	City of Poteau, Unincorporated Areas of Le Flore County.
	Approximately 0.42 mile downstream of Kansas City Southern Railroad.	None	+450	
Morris Creek	Approximately 1,105 feet upstream of Cavanal Scenic Expressway.	None	+547	Town of Howe, Unincorporated Areas of Le Flore County.
	Approximately 0.56 mile downstream of the Morris Tributary confluence.	None	+469	
Morris Tributary	Approximately 925 feet upstream of County Road East 1425.	None	+492	Town of Howe, Unincorporated Areas of Le Flore County.
	At the Morris Creek confluence	None	+476	
Mountain Creek	At the upstream side of U.S. Route 59	None	+488	Town of Wister.
	Approximately 150 feet upstream of the Caston Creek confluence.	None	+476	
Poteau River	Approximately 300 feet upstream of U.S. Route 270 ..	None	+483	City of Poteau.
	Approximately 0.85 mile upstream of Old State Route 112.	None	+445	
Rock Creek	Approximately 0.89 mile upstream of Old State Route 112.	None	+445	Town of Wister, Unincorporated Areas of Le Flore County.
	Approximately 1,500 feet downstream of U.S. Route 271.	None	+470	
Town Creek South	Approximately 0.39 mile upstream of U.S. Route 271	None	+487	City of Poteau.
	At the Town Creek North confluence	None	+448	
	At the upstream side of Saddler Street	None	+461	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Poteau

Maps are available for inspection at 111 Peters Street, Poteau, OK 74953.

Town of Howe

Maps are available for inspection at 21781 West Main Street, Howe, OK 74940.

Town of Wister

Maps are available for inspection at 101 Caston Street, Wister, OK 74966.

Unincorporated Areas of Le Flore County

Maps are available for inspection at 100 South Broadway Street, Poteau, OK 74953.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 13, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011-24687 Filed 9-23-11; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BB26

Fisheries of the Caribbean, Gulf of Mexico and South Atlantic; Comprehensive Ecosystem-Based Amendment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted the Comprehensive Ecosystem-Based Amendment (CE-BA 2) for review, approval, and implementation by NMFS. Management actions proposed in CE-BA 2 include modification to the management of octocorals in Federal waters as well as removing the octocorals off Florida from

the octocoral fishery management unit (FMU), and establishing an annual catch limit (ACL) of zero for octocorals in the revised FMU. In the Special Management Zones (SMZs) off South Carolina CE-BA 2 would limit the harvest for snapper-grouper and coastal migratory pelagic species to the recreational bag limit. CE-BA 2 would also modify sea turtle release gear requirements for the snapper-grouper fishery. Additionally, CE-BA 2 would amend selected South Atlantic Council Fishery Management Plans (FMPs) to revise or designate new essential fish habitat (EFH) and EFH-Habitat Areas of Particular Concern (EFH-HAPCs).

DATES: Written comments must be received no later than 5 p.m., eastern time, on November 25, 2011.

ADDRESSES: You may submit comments, identified by "NOAA-NMFS-2011-0219", by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business

Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2011-0219" in the keyword search and click on "search". To view posted comments during the comment period, enter "NOAA-NMFS-2011-0219" in the keyword search and click on "search". NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this notice will not be accepted.

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

Karla Gore, telephone: 727-824-5305; fax: 727-824-5308; e-mail: Karla.Gore@noaa.gov.

SUPPLEMENTARY INFORMATION: CE-BA 2 includes amendments to the following South Atlantic FMPs: the FMP for Coral, Coral reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP); the FMP for *Sargassum* of the South Atlantic Region (Sargassum FMP); and the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), as prepared and submitted by the Council. CE-BA 2 also includes an amendment

to the FMP for the Coastal Migratory Pelagic (CMP) Resources in the Atlantic and Gulf of Mexico (CMP FMP), as prepared and submitted by the Council and the Gulf of Mexico Fishery Management Council (Gulf Council).

The fisheries for CMP species; coral, coral reefs, and live/hard bottom habitats; and snapper-grouper off the southern Atlantic states are managed under their respective FMPs. The Coral, Snapper-Grouper and Sargassum FMPs were prepared by the Council. The CMP FMP was jointly prepared by the Council and the Gulf Council. All FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

Background

Magnuson-Stevens Act requires that for stocks determined by the Secretary of Commerce to not be subject to overfishing, ACLs must be specified in 2011. These ACLs shall be established at a level that prevents overfishing from occurring, and does not exceed the fishing level recommendation of the respective Council's Scientific and Statistical Committee or other established peer review processes.

An ACL is the level of annual catch of a stock or stock complex that is set to prevent overfishing from occurring. An ACL that is reached may serve as the basis for triggering an accountability measure (AM). National Standard 1 Guidelines of the Magnuson-Stevens Act state that AMs may also be implemented to ensure an ACL is not exceeded. ACLs may incorporate management and scientific uncertainty, and take into account the amount of data available and level of vulnerability to overfishing for each species.

Management Measures Contained in This Amendment

CE-BA 2 would modify the FMU for octocorals in the South Atlantic exclusive economic zone (EEZ), establish an ACL of zero for octocorals, limit harvest of snapper-grouper species and CMP resources in the SMZs off South Carolina to the recreational bag limit, and modify sea turtle and small tooth sawfish release gear specifications based on the freeboard height of commercial South Atlantic snapper-grouper vessels. CE-BA 2 also proposes to designate new EFH and EFH-HAPCs

to include deep-water Marine Protected Areas for snapper-grouper species, designate deep-water Coral HAPCs as EFH-HAPCs, and designate the top 33 ft (10 m) of the water column in the South Atlantic EEZ bounded by the Gulf Stream as EFH for pelagic *Sargassum*.

Octocoral FMU

CE-BA 2 would modify the FMU for octocorals under the Coral FMP to only include octocorals in the EEZ off North Carolina, South Carolina, and Georgia. Federal management of octocorals in the EEZ off Florida would no longer be included under the Coral FMP. Florida's Fish and Wildlife Conservation Commission (FWC) is currently responsible for the majority of the management, implementation, and enforcement of octocorals, because the majority of octocoral harvest occurs in Florida state waters. The FWC intends to extend their management of octocorals into the Federal waters off Florida.

Octocoral ACL

CE-BA 2 would specify an ACL of zero for the octocorals remaining in the Coral FMP for the EEZ off Georgia, South Carolina and North Carolina. Currently in the FMP there is a 50,000 colony quota for octocorals in the Gulf of Mexico and South Atlantic region and there is a prohibition to harvest octocorals in the EEZ north of Florida.

SMZ Management off South Carolina

CE-BA 2 proposes management measures to limit the harvest and possession of South Atlantic snapper-grouper species and CMP species (with the use of all non-prohibited fishing gear) in the SMZs off South Carolina to the recreational bag limit. Current Federal regulations prohibit the taking snapper-grouper in the SMZs off South Carolina with a powerhead, and this amendment would also prohibit fishermen from harvesting commercial quantities of snapper-grouper and CMP species in these SMZs. This action would respond to concerns from the recreational sector about the potential for commercial exploitation of these species in the SMZs off South Carolina. SMZs were originally established to enhance recreational fishing opportunities off South Carolina. Modifying the management of the SMZs to restrict commercial fishing effort to the bag limit for snapper-grouper and CMP species would eliminate the harvest of commercial quantities of snapper-grouper and CMP species and would ensure the original intent of the SMZs is realized.

Sea Turtle and Smalltooth Sawfish Release Gear Requirements

CE-BA 2 proposes modifications to the sea turtle and smalltooth sawfish release gear requirements. Fishermen have expressed concern to the Council that the current sea turtle handling and release gear requirements are intended for larger longline vessels using heavy tackle and are ineffective and unwieldy for smaller snapper-grouper hook-and-line vessels. This measure would modify the handling and release requirements based on vessel freeboard height. Fishermen would still be required to comply with all current sea turtle and smalltooth sawfish release guidelines outlined in the NMFS document entitled, "Careful Release Protocols for Sea Turtle Release with Minimal Injury," however, the specifications of the release gear would be modified.

EFH and EFH-HAPCs

CE-BA 2 would also amend the South Atlantic FMPs as needed to designate new or modify existing EFH and EFH-HAPCs. CE-BA 2 would amend the Snapper-Grouper FMP to designate deep-water MPAs as EFH-HAPCs. These deep-water MPAs were previously established through Amendment 14 to the Snapper-Grouper FMP and include the Snowy Grouper Wreck-MPA, Northern South Carolina MPA, Edisto MPA, Charleston Deep Artificial Reef MPA, Georgia MPA, North Florida MPA, St. Lucie Hump MPA, and East Hump MPA. The Coral FMP would be amended to designate deep-water coral HAPCs (CHAPCs) as EFH-HAPCs. These CHAPCs were established under the Comprehensive Ecosystem-Based Amendment 1 and include Cape Lookout Coral HAPC, Cape Fear Coral HAPC, Blake Ridge Diapir Coral HAPC, Stetson-Miami Terrace Coral HAPC, and Pourtalés Terrace Coral HAPC. CE-BA 2 would also designate EFH-HAPCs for blueline and golden tilefish. To meet the Magnuson-Stevens Act requirement that all managed species have EFH designated, CE-BA 2 would amend the Sargassum FMP to designate the top 33 ft (10m) of the water column in the South Atlantic EEZ bounded by the Gulf Stream, as EFH for pelagic *Sargassum*.

Consideration of Public Comments

A proposed rule that would implement measures outlined in the CE-BA 2 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with

the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by November 25, 2011, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 2011.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011-24677 Filed 9-23-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-AY22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Generic Annual Catch Limits/Accountability Measures Amendment for the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted a Generic Annual Catch Limits/Accountability Measures Amendment (Generic ACL Amendment) to the Fishery Management Plans (FMPs) for Reef Fish Resources, Red Drum, Shrimp, and Coral and Coral Reefs for the Gulf of Mexico (Gulf) for review, approval, and implementation by NMFS. The amendment proposes actions to allow management of selected species by other Federal and/or state agencies; remove species not currently in need of Federal management from the FMPs; develop species groups for management; establish acceptable biological catch (ABC) control rules; establish annual

catch limits (ACLs) and ACL control rules; modify framework procedures; and establish accountability measures (AMs).

DATES: Written comments must be received on or before November 25, 2011.

ADDRESSES: You may submit comments on the amendment identified by NOAA-NMFS-2011-0143 by any of the following methods:

- **Electronic submissions:** Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2011-0143" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA-NMFS-2011-0143" in the keyword search and click on "search." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, telephone: 727-824-5305, or e-mail: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement

in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The four FMPs being revised by this Generic ACL Amendment were prepared by the Council and implemented through regulations at 50 CFR parts 622 under the authority of the Magnuson-Stevens Act.

Background

The 2006 revisions to the Magnuson-Stevens Act require that, in 2011, for fish stocks determined by the Secretary to not be subject to overfishing, ACLs must be established at a level that prevents overfishing and helps to achieve optimum yield (OY) within a fishery. The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Actions Contained in the Amendment

The Generic ACL Amendment proposes to identify those fish stocks in need of ACLs; identify stocks that do not need Federal management and can therefore be removed from their respective FMPs; delegate management of selected stocks to other management agencies; and combine selected stocks into species groupings for more effective management. Additionally, the amendment would establish the necessary procedures for determining and implementing ACLs and associated management measures by creating an ABC control rule, an ACL/annual catch target (ACT) control rule, and framework procedures for implementing management changes in a timelier manner. The Generic ACL Amendment would establish ACLs, and optionally ACTs, for fish stocks or stock groups. The Generic ACL Amendment also defines the apportionment for three selected stocks across the jurisdictional boundary between the Gulf Council and the South Atlantic Fishery Management Council (South Atlantic Council), and allocates the harvest of black grouper between the commercial and recreational sectors within the reef fish fishery in the Gulf. Finally, the Generic ACL Amendment establishes AMs intended to respond to and manage future harvest should a stock or stock groups ACL be exceeded.

Transfer Management of Selected Stocks to Other Agencies

The presence of some stocks in Gulf Federal waters is uncommon and their occurrence is predominately within the jurisdiction of the South Atlantic Council. National Standard 7 of the Magnuson-Stevens Act states that, to the extent practicable, conservation and management measures shall avoid unnecessary duplication. The Generic ACL Amendment proposes to remove Nassau grouper from the Reef Fish FMP; the Council will request that the Secretary of Commerce designate the South Atlantic Council as the responsible council for Nassau grouper. The South Atlantic Council has agreed to manage this species throughout its range in the South Atlantic and Gulf of Mexico regions. Similarly, the Generic ACL Amendment would remove octocorals from the Coral and Coral Reefs FMP. The majority of harvest of octocorals occurs in waters under the jurisdiction of the South Atlantic Council, and they will continue to manage octocorals in their region. Octocoral harvest in the Gulf occurs primarily in Florida territorial waters. Florida manages octocorals in its state waters, and has notified the Council that it will assume management of octocorals in Gulf Federal waters as well.

Removal of Stocks From Reef Fish Fishery Management Plan

Approximately 50 species of fish are under consideration for management actions in the Generic ACL Amendment. Many uncommonly harvested species were originally placed in fishery management plans for data monitoring purposes, rather than because they were considered to be in need of Federal management. The Generic ACL Amendment would remove ten of the less frequently landed species in the Reef Fish FMP, after the Council determined these species are not in need of Federal management. Species proposed for removal include those species for which average landings are less than 15,000 lb (6,804 kg) annually, or that are harvested primarily in state waters, and include: Anchor tilefish, misty grouper, sand perch, dwarf sand perch, blackline tilefish, schoolmaster, red hind, rock hind, dog snapper, and mahogany snapper.

Species Groupings

In some cases, groups of stocks share a common habitat and are caught with the same gear in the same area at the same time. Some species groupings already exist in management, *i.e.*, shallow-water grouper, deep-water

grouper, and tilefishes. The Council determined that grouping species that share similar fishery characteristics would allow for more effective management of those lesser caught species where there is insufficient individual single species information.

ABC Control Rules

Standard methods for determining the appropriate ABC would allow the Council's Scientific and Statistical Committee (SSC) to determine an objective and efficient assignment of ABC at or less than the overfishing limit. The SSC's selection of an ABC takes into account scientific uncertainty regarding the harvest levels that would lead to overfishing. The quality and quantity of landings information varies according to the stock in question, thus separate control rules are needed for data-adequate and data-poor stocks. In some cases, the nature of the fishery or other management considerations may require a separate control rule for a given stock.

ACL/ACT Control Rules

Under the Magnuson-Stevens Act, ACTs are optional management targets intended to help constrain harvest to levels so that the ACL is not exceeded. Establishing control rules for setting these catch levels would provide guidance to the Council on setting an objective and efficient assignment of ACLs that take into account the potential for management uncertainty. As with the ABC control rule, different levels of landings information about catch levels and management of stocks may require separate control rules for data-adequate and data-poor stocks. In some cases, the nature of the fishery or other management considerations may require a separate control rule for a given stock.

Generic Framework Procedures

To facilitate timely adjustments to harvest parameters and other management measures, the Council has added the ability to adjust ACLs and AMs, and establish and adjust total allowable catch, to the current framework procedures. These adjustments or additions may be accomplished through a regulatory amendment which is less time intensive than an FMP amendment. By including ACLs, AMs, ACTs, and other management criteria in the framework procedures, the Council and NMFS would have the flexibility to more promptly alter those harvest parameters as new scientific information becomes available. The proposed addition of other management options into the

framework procedures would also add flexibility and the ability to more timely respond to certain future Council decisions through the framework procedures.

Specification of ACLs

The Generic ACL Amendment would assign initial ACLs, and optionally ACTs, for each of the stocks retained for Federal management in the amendment. Additionally, the Generic ACL Amendment would apportion harvest levels of black grouper, yellowtail snapper, and mutton snapper stocks between the Gulf Council and South Atlantic Council. Finally, this measure would establish commercial and recreational harvest allocations for black grouper for the Gulf.

Accountability Measures

In-season and post-season AMs are proposed that would maintain catch levels within the proposed ACLs or to restore catch levels to those limits if exceeded. These AMs would take into account the timeliness of the catch data for in-season monitoring, as well as whether the stock is under a rebuilding plan.

Consideration of Public Comments

A proposed rule that would implement measures outlined in the Generic ACL Amendment has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by November 25, 2011, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 2011.

Emily H. Menashes,

Acting Director,

Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2011-24701 Filed 9-23-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-AY55

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments to the Queen Conch and Reef Fish Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) has submitted Amendment 2 to the Fishery Management Plan (FMP) for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands and Amendment 5 to the FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Amendments 2 and 5) for review, approval, and implementation by NMFS. These amendments would establish annual catch limits (ACLs) and accountability measures (AMs) for queen conch and all reef fish units or complexes that are classified as undergoing overfishing or that contain sub-units which are classified as undergoing overfishing (i.e. snapper, grouper and parrotfish); allocate ACLs among island management areas and, in Puerto Rico only, among the commercial and recreational sectors; revise the composition of the snapper and grouper complexes; prohibit fishing for and possession of three parrotfish species (midnight, blue, rainbow); establish recreational bag limits for snappers, groupers, and parrotfishes; and establish framework procedures for queen conch and reef fish species. Amendments 2 and 5 would also revise management reference points and status determination criteria for queen conch, snappers, groupers, and parrotfishes. The intended effects of Amendments 2 and 5 are to prevent overfishing of queen conch and reef fish species while maintaining catch levels consistent with achieving optimum yield (OY).

DATES: Written comments must be received on or before November 25, 2011.

ADDRESSES: You may submit comments on Amendments 2 and 5, identified by "NOAA-NMFS-2010-0028" by any of the following methods:

- **Electronic Submissions:** Submit electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Bill Arnold, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2010-0028" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA-NMFS-2010-0028" in the keyword search and click on "search". NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this notice will not be considered.

Electronic copies of Amendments 2 and 5, which include a Final Environmental Impact Statement (FEIS), an initial regulatory flexibility analysis (IRFA), a regulatory impact review (RIR), and a fishery impact statement may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Bill Arnold, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: Bill.Arnold@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

In the exclusive economic zone (EEZ) of the U.S. Caribbean, the queen conch

fishery is managed under the Fishery Management Plan (FMP) for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (USVI) and the reef fish fishery is managed under the Reef Fish FMP of Puerto Rico and the USVI. The two FMPs being revised by Amendments 2 and 5 were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The 2006 revisions to the Magnuson-Stevens Act require that, by 2010, FMPs for the fisheries determined by the Secretary of Commerce to be subject to overfishing must establish a mechanism of specifying ACLs at a level that prevents overfishing and does not exceed the fishing level recommendations of the Council's Scientific and Statistical Committee (SSC) or other established peer-review processes. Additionally, AMs must be designed that are implemented when an ACL is exceeded. According to the 2010 NMFS' Report on the Status of the U.S. Fisheries, Caribbean queen conch is undergoing overfishing, as are Grouper Units 1 and 4, Snapper Unit 1, and Parrotfish.

Actions Contained in the Amendment

Amendments 2 and 5 modify the species compositions in the reef fish fishery management unit (FMU). The amendments also revise management reference points to transition U.S. Caribbean reef fish and queen conch management from that established in the Comprehensive Sustainable Fisheries Amendment (Caribbean SFA Amendment) of 2005 to that mandated by the revised Magnuson-Stevens Act. Additionally, Amendments 2 and 5 would establish the necessary procedures for determining and implementing ACLs for the U.S. Caribbean island groups, including Puerto Rico, St. Croix in the USVI, and the island group of St. Thomas and St. John in the USVI. Management measures are also proposed to implement harvest prohibitions for three parrotfish species (midnight, blue, rainbow). Recreational bag limits for reef fish are proposed and an additional harvest reduction for parrotfish only for St. Croix would be established. The amendment also establishes AMs to respond to and manage future harvest with respect to the ACLs. Finally, the amendment establishes framework provisions for reef fish and queen conch.

Amend the Stock Complexes in the Reef Fish Fishery Management Unit

The snapper and grouper complexes included within the Reef Fish FMP are currently composed of four grouper and four snapper units. At the present time, unit composition excludes several species of commonly harvested fish and does not aggregate species in an ecologically consistent manner.

The black grouper is currently not included in any of the reef fish species units although this species is frequently caught by recreational anglers. The Council and NMFS propose to add black grouper to Grouper Unit 4 with other grouper species that share common habitat and depth preferences. Both misty and yellowedge grouper are presently included in Grouper Unit 4, but these two species are found at water depths much greater than are the other members currently in Grouper Unit 4. Therefore, Amendments 2 and 5 propose to create a new Grouper Unit 5 that would contain both misty and yellowedge grouper. Finally, the creolefish is rarely caught by commercial or recreational fishers and is proposed to be removed from Grouper Unit 3.

The cardinal snapper is commonly caught by commercial fishers but is not included in any current snapper unit. The amendment proposes to add cardinal snapper to Snapper Unit 2 because of similarities with the queen snapper in landings records and depth distribution. In contrast, the wenchman is presently included as a member of Snapper Unit 2 but clusters most closely with members of Snapper Unit 1 based upon depth and habitat preferences and is therefore proposed to be moved into that unit.

Revision of Management Reference Points

The Magnuson-Stevens Act requires that FMPs specify a number of reference points for managed fish stocks, including maximum sustainable yield (MSY), OY, and stock status determination criteria (including overfished and overfishing thresholds). These reference points are determined for the entire U.S. Caribbean and are intended to provide the means to measure the status and performance of fisheries relative to established goals. Available data in the U.S. Caribbean are not sufficient to support direct estimation of these parameters. Thus, the amendment proposes to use average landings as a proxy for MSY for all units or complexes except queen conch and parrotfish. The MSY proxy of queen conch and parrotfish would be set equal to the fishing level recommendation

specified by the Council's Scientific and Statistical Committee (SSC) (*i.e.* the allowable biological catch (ABC)) for those species. The overfishing threshold of all species will be defined as the overfishing limit (OFL), which would equal the MSY proxy. For most units or complexes, OY is proposed to equal the MSY proxy multiplied by a reduction factor to account for uncertainty in the scientific and management process, the proposed reduction factor being 0.85. The OY of queen conch would not be reduced below the MSY proxy. Specifically for Nassau grouper, goliath grouper, rainbow parrotfish, blue parrotfish, and midnight parrotfish, the rule proposes to set the OY equal to zero.

Island Specific Management

This amendment also proposes island-specific management to enable determination of ACLs and application of AMs in response to harvesting activities on a single island (Puerto Rico, St. Croix) or island group (St. Thomas/St. John) without affecting fishing activities on the other islands or island groups. This amendment proposes to implement geographical boundaries between islands and island groups based upon an equidistant approach that uses the mid-point to divide the EEZ among islands. The three proposed island management areas are Puerto Rico, St. Croix, and St. Thomas/St. John.

Annual Catch Limits and Accountability Measures

This amendment proposes to establish ACLs and AMs for queen conch and for all snapper, grouper, and parrotfish units or complexes in the Caribbean Reef Fish FMP. Separate sector ACLs (commercial and recreational) would be established for the Puerto Rico management area where landings data are available for both the commercial and recreational sectors. The other island management areas have only commercial data available and therefore, ACLs would be established for the St. Croix and St. Thomas/St. John management areas based on commercial landings data only.

The ACLs proposed in Amendments 2 and 5 are derived from the OFL (MSY proxy) (or SSC-recommended ABC) and most are reduced by 15 percent to buffer against scientific and management uncertainty, reducing the probability that overfishing will occur. The portion of the parrotfish ACL allocated St. Croix is reduced by an additional 5.8822 percent to further reduce the impacts of parrotfish harvest on Acropora coral species in St. Croix waters, where

parrotfish harvest is particularly intense. This amendment specifies an ACL of zero for Nassau grouper, goliath grouper, rainbow parrotfish, blue parrotfish, and midnight parrotfish. The amendment also proposes an ACL equal to the ABC recommended by the SSC for queen conch, which is far below recent average landings.

Management Measures

Amendments 2 and 5 propose to establish a recreational bag limit for the harvest of snapper, grouper and parrotfish. This amendment also proposes a vessel limit on snapper, grouper, and parrotfish.

Accountability Measures

Accountability measures are designed to prevent fishermen from exceeding the snapper, grouper, parrotfish and queen conch ACLs. The amendment proposes to implement AMs if an ACL has been exceeded based upon a moving multi-year average of landings. Post-season AMs are proposed that would ensure the ACL is not exceeded in the year following a reported ACL overage based on a moving-year evaluation of landings and a subsequent reduction in the length of the fishing season in the following year. If it is determined that the overage occurred because data collection and monitoring improved rather than because catches actually increased, AMs may not be applied.

Framework Measures

Amendments 2 and 5 propose framework measures for both the reef fish and queen conch FMPs. Management measures proposed to be adjusted through the framework procedure include quotas, closures, limits, gear rules, and reference point modifications. The purpose of the framework is to allow the Council to expeditiously adjust these reference points and management measures in response to changing fishery conditions.

Consideration of Public Comments

A proposed rule that would implement measures outlined in Amendments 2 and 5 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If the determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by November 25, 2011, whether specifically directed to the amendment or the proposed rule,

will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 2011.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011-24676 Filed 9-23-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BA62

Amendments to the Reef Fish, Spiny Lobster, Queen Conch and Coral and Reef Associated Plants and Invertebrates Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Caribbean Fishery Management Council (Council) has submitted a 2011 Annual Catch Limits/Accountability Measures Amendment (2011 Caribbean ACL Amendment) to the Fishery Management Plans (FMPs) for Reef Fish Resources, Spiny Lobster, Queen Conch, and Coral and Reef Associated Plants and Invertebrates for the U.S. Caribbean for review, approval, and implementation by NMFS. This amendment proposes actions to establish annual catch limits (ACLs) and accountability measures (AMs) if ACLs should be exceeded for selected reef fish, spiny lobster, and aquarium trade species identified by the Secretary as not undergoing overfishing; allocate ACLs for island management areas and for the commercial and recreational sectors; revise the species within the conch FMU; establish bag limits for selected reef fish species and spiny lobster; and establish framework procedures for spiny lobster and coral and reef associated plants and

invertebrates species. The 2011 Caribbean ACL Amendment would also revise management reference points and status determination criteria for angelfish, boxfish, goatfish, grunts, hogfish, jacks, scups and porgies, spiny lobster, squirrelfish, surgeonfish, triggerfish and tilefish, and aquarium trade species. The intended effect of the 2011 Caribbean ACL Amendment is prevent overfishing of reef fish, spiny lobster and aquarium trade species while maintaining catch levels consistent with achieving optimum yield (OY).

DATES: Written comments must be received on or before November 25, 2011.

ADDRESSES: You may submit comments on these Amendments, identified by NOAA-NMFS-2011-0017, by any of the following methods:

- **Electronic Submissions:** Submit electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Miguel Lugo and Maria Lopez, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit comment," then enter "NOAA-NMFS-2011-0017" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA-NMFS-2011-0017" in the keyword search and click on "search". NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this notice will not be considered.

Electronic copies of the amendment may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Miguel Lugo or Maria Lopez, telephone: 727-824-5305, or e-mail:

Miguel.Lugo@noaa.gov or Maria.Lopez@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The four FMPs being revised by the 2011 Caribbean ACL Amendment were prepared by the Council and implemented through regulations at 50 CFR parts 622 under the authority of the Magnuson-Stevens Act.

Background

The 2006 revisions to the Magnuson-Stevens Act require that, in 2011, for fish stocks determined by the Secretary to not be subject to overfishing, ACLs must be established at a level that prevents overfishing and helps to achieve OY within a fishery. The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Actions Contained in the Amendment

The 2011 Caribbean ACL Amendment considers alternatives to revise management reference points, and implement ACLs for those species not subject to overfishing. In addition, the 2011 Caribbean ACL Amendment would redefine the aquarium trade species FMUs within the Reef Fish FMP and the Coral and Reef Associated Plants and Invertebrates FMP, revise the species composition of the FMU within the Queen Conch Resources FMP, manage selected Federal fisheries through defined island management areas in the exclusive economic zone (EEZ). Additionally, the 2011 Caribbean ACL Amendment would establish recreational bag limits for reef fish and spiny lobster species, establish AMs if ACLs are exceeded, and establish framework procedures for implementing management changes in a timelier

manner for both the spiny lobster and coral and reef associated plants and invertebrates FMPs.

Management Reference Points for the Reef Fish and Spiny Lobster FMPs

The Magnuson-Stevens Act requires that FMPs specify a number of reference points for managed fish stocks, including maximum sustainable yield (MSY), OV, and stock status determination criteria (including overfished and overfishing thresholds). These reference points are determined for the entire U.S. Caribbean and are intended to provide the basis to measure the status and performance of fisheries relative to established goals. Available data in the U.S. Caribbean are not currently sufficient to support the direct estimation of these parameters. Thus, the amendment proposes to use average catch as a proxy for MSY. The overfishing limit (OFL) and allowable biological catch (ABC) would be set equal to the MSY proxy. OY would be set as the MSY proxy multiplied by a reduction factor to account for uncertainty in the scientific process, the proposed uncertainty reduction factor being 10 percent. For surgeonfish, angelfish and aquarium trade species specifically, the amendment proposes an uncertainty reduction factor of 25 percent.

Management Reference Points and Fisheries Management Unit for the Aquarium Trade Species

This action presents alternatives to redefine the management of aquarium trade species within the Reef Fish FMP and within the Coral and Reef Associated Plants and Invertebrates FMP (Coral FMP). Alternatives under this action could maintain the present arrangement of aquarium trade species; consolidate all the federally managed aquarium trade species into a single FMP; remove all aquarium trade species from both the Coral and Reef Fish FMPs with the result that they will no longer be subject to Federal management; keep only those aquarium trade species for which landings data are available during the year sequences specified, and remove all remaining aquarium trade species from the FMPs; or delegate management authority of all aquarium trade species in the Reef Fish and the

Coral FMPs to the jurisdiction of the appropriate commonwealth or territory.

Removal of Species From the Queen Conch Resources FMP

The 2011 Caribbean ACL Amendment would remove all conch species, except for the queen conch (*Strombus gigas*), from the conch FMU.

Geographic Allocation/Management

Except for tilefishes and aquarium trade species, the 2011 Caribbean ACL Amendment would establish island-specific management areas to manage ACLs and the application of AMs in response to harvesting activities on a more island specific level. The island management areas would be Puerto Rico, St. Croix, and the combined area of St. Thomas and St. John. The geographic boundaries between islands and island groups would be based upon an equidistant approach that uses a midpoint to divide the EEZ among islands. Landings data from Puerto Rico will be used to establish the Caribbean-wide ACLs for tilefishes and aquarium trade species.

Establish Annual Catch Limits and Accountability Measures

The 2011 Caribbean ACL Amendment would establish ACLs and AMs for Caribbean reef fish, spiny lobster, and aquarium trade species that are not undergoing overfishing. Separate commercial and recreational ACLs would be established for the Puerto Rico island management area based on the availability of landings data for the commercial and recreational sectors. For the other island management areas, only commercial data are available, therefore, ACLs would be established for the St. Croix and St. Thomas/St. John island management areas based on commercial landings data only.

Post-season AMs are proposed that would ensure the ACL is not exceeded in the year following a reported ACL overage based on a moving-year evaluation of landings and a subsequent reduction in the length of the following fishing year to ensure the ACL is not exceeded in that following year.

Establishment of Recreational Bag and Possession Limits

The 2011 Caribbean ACL Amendment would establish recreational bag limits for selected reef fish species and spiny lobster. The amendment would also set an overall vessel possession limit for the recreational sector for selected reef fish species and spiny lobster.

Framework Procedures

To facilitate timely adjustments to harvest parameters and other management measures, the Council has proposed framework procedures for both the spiny lobster and coral and reef and associated plants and invertebrates FMPs. Framework procedures allow the Council and NMFS to have the flexibility to more promptly alter management options to respond to changing fishery conditions and new scientific information.

Consideration of Public Comments

A proposed rule that would implement measures outlined in the 2011 Caribbean ACL Amendment has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by November 25, 2011, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 2011.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2011-24700 Filed 9-23-11; 8:45 am]

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Notices

Federal Register

Vol. 76, No. 186

Monday, September 26, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

BUREAU OF CONSUMER FINANCIAL PROTECTION

Proposed Information Collection; Comment Request; Generic Clearance for Research in Development of Disclosure Forms

September 20, 2011.

Summary: The Bureau of Consumer Financial Protection ("CFPB") will submit a Generic Information Collection Request (Generic ICR): "Generic Clearance for Research in Development of Disclosure Forms" to OMB for review and clearance under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the agency contact listed below. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11010, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 26, 2011 to be assured of consideration.

OMB Number: 1505-XXXX.

Type of Review: Generic Clearance Request.

Title: Generic Clearance for Research in Development of Disclosure Forms.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, Title X, requires the CFPB to develop model forms that integrate separate disclosures concerning residential mortgage loans that are required under the Truth in Lending Act ("TILA") and Real Estate Settlement Procedures Act ("RESPA"). The development of the integrated disclosures will involve qualitative testing of the disclosures given in connection with consummation of the transaction and may involve testing of additional disclosures required by TILA and RESPA during the shopping,

application, and origination process. In addition, the CFPB may perform qualitative testing of other model disclosures or materials related to the integrated mortgage loan disclosures, such as instructions for loan originators, tools to assist consumers in understanding the disclosures and loan products and features, other mortgage loan-related disclosures, and of industry usability. Additionally, the CFPB anticipates engaging the public to obtain feedback about the draft integrated mortgage loan disclosures and related materials before formal notice and comment of proposed rules.

The CFPB will collect qualitative data through a variety of collection methods, which may include interviews, focus groups and the Internet, to inform its design and development of the mandated integrated disclosures and their implementation. The information collected through qualitative evaluation methods will inform the disclosure form's design and content, using an iterative process to improve the draft form to make it easier for consumers to use the document to identify the terms of the loan, compare among different loan products, and understand the final terms and costs of the loan transaction. The research will result in recommendations for development of and revisions to disclosure forms and related materials provided to consumers in connection with obtaining mortgage loans. The research activities will be conducted primarily by external contractors employing cognitive psychological testing methods. This approach has been demonstrated to be feasible and valuable by other agencies in developing disclosures and other forms. The planned research activities will be conducted during FY 2012 through FY 2014 with the goal of creating effective disclosures and related materials for consumers.

Affected Public: Individuals, businesses or other for-profit institutions, and not-for-profit institutions.

Estimated Total Annual Burden Hours

Annual Number of Respondents: 34,900.

Average Minutes per Response: 7 minutes.

Annual Burden Hours: 3544.

Comments are invited on: (a) Whether the collection of information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden of the collection of information (including hours and costs); (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 on other forms of information technology. All comments will be a matter of public record.

Agency Contact: Richard Horn, Bureau of Consumer Financial Protection, 1801 L Street, NW., Washington, DC 20036; (202) 435-7406.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503. (202) 395-7873.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2011-24578 Filed 9-23-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—National Universal Product Code (UPC) Database

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved collection for the development and maintenance of a central repository containing information about authorized WIC foods as approved by various WIC State agencies.

DATES: Written comments must be received on or before November 25, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection

of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Debra Whitford, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 520, Alexandria, VA 22302. Comments may also be submitted via e-mail to WICHQ-SFPD@fns.usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this information collection should be directed to Patricia Davis at 703-305-2746.

SUPPLEMENTARY INFORMATION:

Title: National Universal Product Code (UPC) Database.

Form Number: N/A.

OMB Number: 0584-0552.

Expiration Date: March 31, 2012.

Type of Request: Revision of a currently approved collection.

Abstract: The Special Supplemental Nutrition Program for Woman, Infants and Children (WIC), (Public Law 109-85), provides low-income pregnant, breastfeeding, and postpartum women, infants, and children up to age five with nutritious supplemental foods. The program also provides nutrition education and referrals to health and social services.

The WIC Program is administered by the USDA Food and Nutrition Service (FNS). FNS provides grant funding and issues regulations which are utilized by WIC State agencies to operate the WIC Program and distribute benefits through local WIC clinics. The program operates throughout the 50 States, in the District of Columbia, Guam, Puerto Rico, American Samoa, Commonwealth of

Northern Mariana Island, the Virgin Islands, and in 34 Indian Tribal Organizations.

WIC State agencies are required to authorize eligible foods on their WIC food list by federal regulations at 7 CFR part 246. Under these regulations, State agencies must review food products for eligibility in accordance with federal regulations and State agency (SA) policies. State agencies are not required to authorize all food products eligible under Federal regulations, but generally select foods based on factors such as cost, availability and acceptability to participants. After review, the State agency develops a list of food items available to WIC participants for purchase. State agencies require Authorized Vendors (*i.e.*, stores authorized to provide WIC foods) to ensure that only authorized food items are purchased. A few of these vendors have programmed their point of sale systems to identify WIC approved foods and their associated Universal Product Code (UPC) or Price Look-Up (PLU) code as individual products are scanned at the checkout; however, many vendors still rely on their checkout clerks to ensure only authorized WIC products are approved for purchase.

WIC State agencies operating WIC Electronic Benefit Transfer (EBT) systems provide their Authorized Vendors with an electronic file containing the State agency's current list of authorized foods. This food list is known as the Authorized Products List (APL). In State agencies that have implemented EBT systems, as products are scanned at the checkout lane, the UPC or PLU is matched to the State specific APL. Food items that match the APL, and which are presented in quantities less than or equal to the remaining benefit balance associated with the participant's WIC EBT card, are approved for purchase. Unmatched items, or items in excess of the available account balance, may not be purchased. Authorized WIC Vendors then submit an electronic claim for payment which is evaluated by the SA and is sometimes adjusted by the SA prior to making payment. Subsequent payment of an Authorized Vendor's claim for redemption of WIC benefits is made via an Automated Clearinghouse House electronic transfer.

The Healthy, Hunger-Free Kids Act of 2010 directs the Secretary of Agriculture to establish a National Universal Product Code (NUPC) database to be used by all WIC State agencies as they implement Electronic Benefit Transfer (EBT) statewide, which is a requirement of the law. As a result of this legislation, FNS has adopted a plan to expand the

number of data elements contained in the existing NUPC database while simultaneously reducing the burden of manual data entry currently borne by WIC State agency employees tasked with populating the database. Planned NUPC database modifications and expansion activities are expected to allow for the storage and retrieval of additional data elements for each WIC authorized food to include: Nutrition facts panel, ingredients, allergies, gluten free status, special processing practices (e.g. Kosher or Halal), free form comments field at the Federal level, and all currently existing product identifier fields. Responsibility for populating the NUPC database, which currently resides with individual State agencies, will be shifted to an independent contractor who will serve as the single point of entry for all information entering the NUPC database to ensure that NUPC data is captured with a high level of accuracy while preserving data integrity in a standardized format. Currently it is anticipated that State agencies intending to utilize the NUPC database to create an initial APL may choose to provide only 5 data elements (*i.e.* UPC, Item Name, Package size, Container type, and National Category & Subcategory code) when adding new products to the NUPC database. In addition, State agencies which operate WIC EBT systems, or distribute an APL to their Authorized Vendors, will be asked to forward a copy of their APL to the NUPC database as changes occur.

The NUPC database will therefore provide all State agencies with access to a central repository containing comprehensive information about authorized WIC foods. State agencies are expected to use the NUPC database to create an initial list of authorized foods eligible for redemption by WIC Program participants. Subsequently, State agencies may use the NUPC database to maintain their list of authorized foods and to create an APL for distribution to Authorized Vendors operating in the EBT environment.

Affected Public: State and Tribal Governments. Respondent groups identified include all WIC State agencies currently operating WIC EBT systems, all WIC State agencies currently implementing WIC EBT systems, and all WIC State agencies which have requested funding to implement WIC EBT systems.

Estimated Number of Respondents (March 2012 to March 2015): The total estimated number of respondents is 17. This includes 10 WIC State agencies currently operating EBT systems, 3 WIC State agencies currently implementing WIC EBT systems, and 4 WIC State

agencies which have requested funds for EBT implementation projects.

Estimated Number of Responses per Respondent: The WIC State agencies operating or implementing EBT systems will be asked to provide an electronic copy of their APL in the format specified in the ANSI standard X.9.93 2008 part 2 whenever the contents of the APL change. FNS estimates that each State agency will modify their respective APL's no more than 3 times per week which is equivalent to a maximum of 156 responses per year.

Estimated Total Annual Responses: 2,652 = 17 SA's * 3 submissions/week * 52 weeks/year.

Estimated Time per Response: 648.153 seconds (10.8 minutes or 0.180 hours). The estimated time per response is comprised of the following three components: 92.307 seconds (0.025641 hours) which represents a one-time expenditure of 4 hours per State agency per year to develop or maintain a software application for use transmitting the APL to FNS (amortized over 156 responses per year); 2 seconds (.000243

hours) per response to transmit each APL file electronically; and 553.846 seconds (0.153846 hours) which represents a recurring expenditure of 24 hours per State agency per year to correct or troubleshoot failed APL transmissions (amortized over 156 responses per year).

Estimated Total Annual Burden on Respondents: 28,641.6 minutes (477.36 hours). The table below provides an estimated total annual burden for each type of respondent.

REPORTING BURDEN

Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses	Estimated avg. number of hours per response	Estimated total hours
WIC State agencies operating EBT systems.	10	156	1560	0.180	280.80
WIC State agencies implementing EBT systems	3	156	468	0.180	84.24
WIC State agencies requesting implementation funds	4	156	624	0.180	112.32
Total Reporting Burden	17	.....	2652	.....	477.36

Dated: September 12, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011-24575 Filed 9-23-11; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2011-0017]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Hygiene

AGENCY: Office of the Under Secretary for Food Safety, U.S. Department of Agriculture.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on November 15, 2011. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 43rd Session of the Codex Committee on Food Hygiene (CCFH) of the Codex Alimentarius Commission (Codex), which will be held in Miami, Florida, from December 5-9, 2011. The Under Secretary for Food Safety and the FDA recognize the importance of providing interested parties the opportunity to obtain

background information on the 43rd Session of the CCFH and to address items on the agenda.

DATES: The public meeting is scheduled for November 15, 2011, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the Jamie L. Whitten Building, USDA, 1400 Independence Avenue, SW., Room 107-A, Washington, DC 20250.

Documents related to the 43rd Session of the CCFH will be accessible via the World Wide Web at the following address: <http://www.codexalimentarius.net/current.asp>

Jenny Scott, U.S. Delegate to the CCFH, invites U.S. interested parties to submit their comments electronically to the following e-mail address Jenny.Scott@fda.hhs.gov.

Call-In Number

If you wish to participate in the public meeting for the 43rd Session of the CCFH by conference call, please use the call-in number and participant code listed below.

Call-in Number: 1-888-858-2144.

Participant Code: 6208658.

FOR FURTHER INFORMATION ABOUT THE

43RD SESSION OF THE CCFH CONTACT: Jenny Scott, Senior Advisor, Office of Food Safety, Center for Food Safety and Applied Nutrition, FDA, 5100 Paint Branch Parkway, HFS-300, Room 3B-014, College Park, MD 20740-3835, telephone: (240) 402-2166, fax: (202) 436-2632, e-mail: Jenny.Scott@fda.hhs.gov.

FOR FURTHER INFORMATION ABOUT THE

PUBLIC MEETING CONTACT: Barbara McNiff, U.S. Codex Office, 1400 Independence Avenue, SW., Room 4861, Washington, DC 20250, telephone: (202) 690-4719, fax: (202) 720-3157, e-mail: Barbara.McNiff@fsis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in the food trade.

The CCFH is responsible for:

- Drafting basic provisions on food hygiene applicable to all food;
- Considering, amending if necessary, and endorsing provisions on hygiene prepared by Codex commodity committees and contained in Codex commodity standards;
- Drafting provisions on hygiene applicable to specific food items or food groups, whether coming within the terms of reference of a Codex commodity committee or not;
- Considering specific hygiene problems assigned to it by Codex;
- Suggesting and prioritizing areas where there is a need for microbiological risk assessment at the international level and to develop

questions to be addressed by the risk assessors;

(f) Considering microbiological risk management matters in relation to food hygiene, including food irradiation, and in relation to the risk assessment of FAO/WHO.

The CCFH is hosted by the United States.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 43rd Session of the CCFH will be discussed during the public meeting:

- Matters Referred by Codex and/or Other Codex Committees to the Food Hygiene Committee.

- Matters arising from the work of FAO, WHO, and other International Intergovernmental Organizations: (a) Progress Report on the Joint FAO/WHO Expert Meetings on Microbiological Risk Assessment (JEMRA) and Related Matters; (b) Information from the World Organisation for Animal Health (OIE).

- Proposed Draft Guidelines on the Application of General Principles of Food Hygiene to the Control of Viruses in Food at Step 4.

- Proposed Draft Revision of the Principles for the Establishment and Application of Microbiological Criteria for Foods at Step 4.

- Proposed Draft Guidelines for Control of Specific Zoonotic Parasites in Meat: *Trichinella spiralis* and *Cysticercus bovis* at Step 3.

- Proposed Draft Annex on Melons to the Code of Hygienic Practice for Fresh Fruits and Vegetables at Step 3.

- Discussion Paper on the Review of the Risk Analysis Principles and Procedures Applied by the CCFH.

- CCFH Work Priorities.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Codex Secretariat prior to the CCFH meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the November 15, 2011, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 43rd Session of the CCFH, Jenny Scott (see **ADDRESSES**). Written comments should state that they relate to activities of the 43rd Session of the CCFH.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis

of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (202) 720-5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/News_&_Events/Email_Subscription/. Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

September 19, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011-24569 Filed 9-23-11; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in the following practice standards: #315, Herbaceous Weed Control, #338, Prescribed Burning, #340, Cover Crop, #342, Critical Area Planting, #382, Fence, #400, Bivalve, #422, Hedgerow Planting, #484, Mulching, #511, Forage Harvest Management, #657, Wetland Restoration, #658, Wetland Creation, and #659, Wetland Enhancement. These practices will be used to plan and install conservation practices.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229-5014; Telephone number (804) 287-1691; Fax number (804) 287-1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: <http://www.va.nrcs.usda.gov/technical/draftstandards.html>.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments

and a final determination of change will be made to the subject standards.

Dated: September 19, 2011.

John A. Bricker,

State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 2011-24562 Filed 9-23-11; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funds Availability for the Rural Microentrepreneur Assistance Program for Fiscal Year 2011

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Notice announces the funds available for loans and grants under the Rural Microentrepreneur Assistance Program (RMAP) pursuant to 7 CFR part 4280, subpart D for Fiscal Year (FY) 2011.

Total Funding: \$13,910,351.

Technical Assistance (TA) Only Grants: \$410,500.

Micro lender TA Grants: \$2,607,570.

Loans: \$10,892,281.

The minimum loan amount a Microenterprise Development Organization (MDO) may borrow under this program is \$50,000. The maximum loan any MDO may borrow in any given year is \$500,000. The maximum amount of Technical Assistance (TA)-only grants in FY 2011 is \$40,000 per grantee and total TA-only grants funding will not exceed 10 percent of the amount appropriated to the RMAP program in the fiscal year.

The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation.

DATES: Applications for participating in this Program will be accepted on an ongoing basis, but will be awarded each Federal fiscal quarter. Applications received after June 30, 2011, will be considered for an award of funds available in the first quarter of FY 2012.

ADDRESSES: Applications and forms may be obtained from any Rural Development State Office. Applicants must submit an original complete application to the USDA Rural Development State Office in the State where the applicant's project is located. A list of the USDA Rural Development State Offices addresses and telephone numbers are listed below.

Note: Telephone numbers listed are not toll-free.

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106-3683, (334) 279-3400/TDD (334) 279-3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645-6539, (907) 761-7705/TDD (907) 761-8905.

Arizona

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003, (602) 280-8701/TDD (602) 280-8705.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201-3225, 7(501) 301-3200/TDD (501) 301-3279.

California

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616-4169, (530) 792-5800/TDD (530) 792-5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E-100, Lakewood, CO 80215-5517, (720) 544-2903/TDD (720) 544-2981.

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857-3580/TDD (302) 857-3585.

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW., 25th Place, P.O. Box 147010, Gainesville, FL 32614-7010, (352) 338-3400/TDD (352) 338-3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601-2768, (706) 546-2162/TDD (706) 546-2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waiianuenue Avenue, Hilo, HI 96720, (808) 933-8380/TDD (808) 933-8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378-5600/TDD (208) 378-5644.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403-6200/TDD (217) 403-6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290-3100/TDD (317) 290-3343.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284-4663/TDD (515) 284-4858.

Kansas

USDA Rural Development State Office, 1303 S.W. First American Place, Suite 100, Topeka, KS 66604-4040, (785) 271-2700/TDD (785) 271-2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224-7300/TDD (859) 224-7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473-7921/TDD (318) 473-7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402-0405, (207) 990-9160/TDD (207) 942-7331.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002-2999, (413) 253-4300/TDD (413) 253-4590.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324-5190/TDD (517) 324-5169.

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101-1853, (651) 602-7800/TDD (651) 602-3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269-1608, (601) 965-4316/TDD (601) 965-5850.

Missouri

USDA Rural Development State Office,
601 Business Loop 70 West, Parkade
Center, Suite 235, Columbia, MO
65203-2579, (573) 876-0976/TDD
(573) 876-9480.

Montana

USDA Rural Development State Office,
900 Technology Boulevard, Suite B,
Unit 1, P.O. Box 850, Bozeman, MT
59771, (406) 585-2580/TDD (406)
585-2562.

Nebraska

USDA Rural Development State Office,
Federal Building, Room 152, 100
Centennial Mall North, Lincoln, NE
68508-3803, (402) 437-5551/TDD
(402) 437-5093.

Nevada

USDA Rural Development State Office,
1390 South Curry Street, Carson City,
NV 89703-5146, (775) 887-1222/TDD
(775) 885-0633.

New Jersey

USDA Rural Development State Office,
8000 Midlantic Drive, 5th Floor
North, Suite 500, Mt. Laurel, NJ
08054-1522, (856) 787-7700/TDD
(856) 787-7784.

New Mexico

USDA Rural Development State Office,
6200 Jefferson Street, NE., Room 255,
Albuquerque, NM 87109-3434, (505)
761-4950/TDD (505) 761-4938.

New York

USDA Rural Development State Office,
The Galleries of Syracuse, 441 South
Salina Street, Suite 357, Syracuse, NY
13202-2541, (315) 477-6400/TDD
(315) 477-6447.

North Carolina

USDA Rural Development State Office,
4405 Bland Road, Suite 260, Raleigh,
NC 27609, (919) 873-2000/TDD (919)
873-2003.

North Dakota

USDA Rural Development State Office,
Federal Building, Room 208, 220 East
Rosser, P.O. Box 1737, Bismarck, ND
58502-1737, (701) 530-2037/TDD
(701) 530-2113

Ohio

USDA Rural Development State Office,
Federal Building, Room 507, 200
North High Street, Columbus, OH
43215-2418, (614) 255-2400/TDD
(614) 255-2554.

Oklahoma

USDA Rural Development State Office,
100 USDA, Suite 108, Stillwater, OK

74074-2654, (405) 742-1000/TDD
(405) 742-1007.

Oregon

USDA Rural Development State Office,
1201 NE., Lloyd Blvd., Suite 801,
Portland, OR 97232-1274, (503) 414-
3300/TDD (503) 414-3387.

Pennsylvania

USDA Rural Development State Office,
One Credit Union Place, Suite 330,
Harrisburg, PA 17110-2996, (717)
237-2299/TDD (717) 237-2261.

Puerto Rico

USDA Rural Development State Office,
IBM Building, Suite 601, 654 Munos
Rivera Avenue, San Juan, PR 00918-
6106, (787) 766-5095/TDD (787) 766-
5332.

South Carolina

USDA Rural Development State Office,
Strom Thurmond Federal Building,
1835 Assembly Street, Room 1007,
Columbia, SC 29201-2449, (803) 765-
5163/TDD (803) 765-5697.

South Dakota

USDA Rural Development State Office,
Federal Building, Room 210, 200
Fourth Street, SW, Huron, SD 57350-
2461, (605) 352-1100/TDD (605) 352-
1147.

Tennessee

USDA Rural Development State Office,
3322 West End Avenue, Suite 300,
Nashville, TN 37203-1084, (615) 783-
1300.

Texas

USDA Rural Development State Office,
Federal Building, Suite 102, 101
South Main, Temple, TX 76501-7651,
(254) 742-9700/TDD (254) 742-9712.

Utah

USDA Rural Development State Office,
Wallace F. Bennett Federal Building,
125 South State Street, Room 4311,
Salt Lake City, UT 84138-1106, (801)
524-4320/TDD (801) 524-3309.

Vermont/New Hampshire

USDA Rural Development State Office,
City Center, 3rd Floor, 89 Main Street,
Montpelier, VT 05602-4449, (802)
828-6000/TDD (802) 223-6365.

Virginia

USDA Rural Development State Office,
1606 Santa Rosa Road, Suite 238,
Richmond, VA 23229-5014, (804)
287-1550/TDD (804) 287-1753.

Washington

USDA Rural Development State Office,
1835 Black Lake Boulevard SW., Suite

B, Olympia, WA 98512-5715, (360)
704-7740/TDD (360) 704-7760.

West Virginia

USDA Rural Development State Office,
1550 Earl Core Road, Suite 101,
Morgantown, WV 26505, (304) 284-
4860/TDD (304) 284-4836.

Wisconsin

USDA Rural Development State Office,
4949 Kirschling Court, Stevens Point,
WI 54481-7044, (715) 345-7600/TDD
(715) 345-7614.

Wyoming

USDA Rural Development State Office,
100 East B Street, Room 1005, P.O.
Box 11005, Casper, WY 82602-5006,
(307) 233-6700/TDD (307) 233-6733.

FOR FURTHER INFORMATION CONTACT: For further information on this Notice, please contact the USDA Rural Development State Office for your respective State, as provided in the **ADDRESSES** section of this Notice.

SUPPLEMENTARY INFORMATION:**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570-0062.

Overview

Federal Agency Name: Rural Business-Cooperative Service (an agency of the United States Department of Agriculture in the Rural Development mission area).

Solicitation Opportunity Title: Rural Microentrepreneur Assistance Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number. The CFDA number for this Notice is 10.870.

DATES: Applications for participating in this Program will be accepted on an ongoing basis, but will be awarded each Federal fiscal quarter basis. Applications received after June 30,

2011 will be considered for an award of funds available in the first quarter of FY 2012.

Availability of Notice and Rule. This Notice and the interim rule for the Rural Microentrepreneur Assistance Program (RMAP) are available on the USDA Rural Development Web site at <http://www.rurdev.usda.gov/BCP-LoanAndGrants.html>.

I. Funding Opportunity Description

A. Purpose of the Program. The purpose of RMAP is to support the development and ongoing success of rural microentrepreneurs and microenterprises (businesses generally with ten employees or fewer and in need of financing in the amount of \$50,000 or less as defined in 7 CFR 4280.302).

Assistance provided to rural areas under this program may include the provision of loans and grants to rural Microenterprise Development Organizations (MDOs) for the provision of microloans to rural microenterprises and microentrepreneurs; provision of business-based training and technical assistance to rural microborrowers and potential microborrowers; and other such activities as deemed appropriate by the Secretary to ensure the development and ongoing success of rural microenterprises.

B. Statutory Authority. The RMAP is authorized by Section 379E of the Consolidated Farm and Rural Development Act (7 USC 2008s). Regulations are contained in 7 CFR Part 4280, subpart D.

C. Definition of Terms. The definitions applicable to this Notice are published at 7 CFR 4280.302.

II. Award Information

A. Type of Award: Loan and/or Grant.

B. Fiscal Year Funds: FY 2011.

C. Total Funding: \$13,910,351.
Technical Assistance (TA) Only

Grants: \$410,500.

Microlender TA Grants: \$2,607,570.

Loans: \$10,892,281.

D. Approximate Number of Awards: 35.

E. Anticipated Award Date:

• Fourth Quarter, September 15, 2011.

In the event some program funds allocated for a particular quarter of FY 2011 are not obligated, the remaining unobligated funds will be carried over to the next Federal fiscal quarter. Any FY 2011 funds not obligated under this Notice will be carried over into FY 2012.

III. Eligibility Information

A. Eligible applicants. To be eligible for this program, the applicant must

meet the eligibility requirements in 7 CFR 4280.310.

B. Cost share requirements. The Federal share of the eligible project cost of a microborrower's project funded under this Notice shall not exceed 75 percent. The cost share requirement shall be met by the microlender in accordance with the requirements specified in 7 CFR 4280.311(d).

C. Matching fund requirements. The MDO is required to provide a match of not less than 15 percent of the total amount of the grant in the form of matching funds, indirect costs, or in-kind goods or services.

D. Other eligibility requirements. Applications will only be accepted from eligible MDOs. Eligible MDOs must score a minimum of 70 points out of 100 points to be considered to receive an award. Awards each Federal fiscal quarter will be based on ranking with the highest ranking applications being funded first, subject to available funding.

E. Completeness eligibility. All applications must be submitted as a complete application, in one package. Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are unbound, falling apart, or otherwise not suitable for evaluation. Such applications will be withdrawn.

IV. Fiscal Year 2011 Application and Submission Information

A. Application submittal. Loan applications must be submitted in paper format. Grant applications may be submitted in either paper or electronic format via [Grants.gov](http://www.Grants.gov).

If applications are submitted in paper format, they must be bound in a 3-ring binder and must be organized in the same order set forth in 7 CFR 4280.315. To ensure timely delivery, applicants are strongly encouraged to submit their applications using an overnight, express, or parcel delivery service.

Applicants are encouraged to submit grant only applications through the [Grants.gov](http://www.Grants.gov) Web site at: <http://www.Grants.gov>. Users of [Grants.gov](http://www.Grants.gov) will be able to download a copy of the grant application package, complete it off line, and then upload and submit the application via the [Grants.gov](http://www.Grants.gov) Web site. USDA Rural Development strongly encourages applicants not to wait until the application deadline date to begin the application process through [Grants.gov](http://www.Grants.gov).

When applicants enter the [Grants.gov](http://www.Grants.gov) Web site, they will find information about submitting a grant application electronically through the site as well as the hours of operation. Applicants may

submit all documents electronically through the Web site, including all information required for a complete grant application and all necessary assurances and certifications under 7 CFR 4280.315. After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from [Grants.gov](http://www.Grants.gov) that contains a [Grants.gov](http://www.Grants.gov) tracking number. USDA Rural Development may request that the applicant provide original signatures on forms at a later date.

All applicants, whether filing applications through <http://www.Grants.gov> or by paper, must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1-866-705-5711 or online at <http://fedgov.dnb.com/webform>.

Please note that applicants can locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number, which is 10.870, or FedGrants Funding Opportunity Number, which can be found at <http://www.Grants.gov>.

Federal Funding Accountability and Transparency Act. All applicants, in accordance with 2 CFR part 25, must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1-866-705-5711 or online at <http://fedgov.dnb.com/webform>. Similarly, in accordance with 2 CFR Part 25, all applicants must be registered in the Central Contractor Registration (CCR) prior to submitting an application. Applicants may register for the CCR at <http://www.ccr.gov>, or by calling 1-866-606-8220 and press "1" for CCR and maintain an active CCR registration with current information at all times during which they have an active Federal award or application under consideration by an agency. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

B. Content and form of submission. An application must contain all of the required elements outlined in 7 CFR 4280.315. Each application must address the applicable scoring criteria presented in 7 CFR 4280.316 for the type of funding being requested.

C. Submission dates and times. The original complete application must be received by the USDA Rural Development State Office no later than 4:30 p.m. local time by the application deadline dates listed above, regardless

of the postmark date, in order to be considered for funds available in that Federal fiscal quarter.

Unless withdrawn by the applicant, completed applications that receive a score of at least 70 (the minimum required to be considered for funding), but have not yet been funded, will be retained by the Agency for consideration in subsequent reviews through a total of four consecutive quarterly reviews. Applications that remain unfunded after four quarterly reviews, including the initial quarter in which the application was competed, will not be considered further for an award.

V. Application Review Information

Awards under this Notice will be made on a competitive basis each Federal fiscal quarter. Each application received in the USDA Rural Development State Office will be reviewed, scored, and ranked to determine if it is consistent with the program requirements. Applications will be scored based on the applicable scoring criteria contained in 7 CFR 4280.316. Failure to address any of the applicable scoring criteria will result in a zero-point score for that section. An application must receive at least 70 points to be considered for funding in the quarter in which it is scored.

VI. Award Administration Information

Successful applicants will receive notification for funding from the USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the award will be approved. Unsuccessful applications will receive notification by mail.

VII. Agency Contacts

For general questions about this Notice, please contact your USDA Rural Development State Office as provided in the Addresses section of this Notice.

Nondiscrimination Statement:

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and, where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact

USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (866) 632-9992 (toll free), (202) 260-1026, or (202) 401-0216 (TDD). USDA is an equal opportunity provider, employer, and lender.

Dated: September 20, 2011.

Judith A. Canales,

Administrator, Rural Business-Cooperative Programs.

[FR Doc. 2011-24649 Filed 9-23-11; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-602]

Brass Sheet and Strip From Germany: Preliminary Results of the Third Five-Year ("Sunset") Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 26, 2011.

SUMMARY: On March 1, 2011, the Department of Commerce ("the Department") initiated its third sunset review of the antidumping duty order on brass sheet and strip from Germany, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). The Department is conducting a full sunset review of the order pursuant to 751(c) of the Act and 19 CFR 351.218(e)(2)(i). As a result of this sunset review, the Department preliminarily finds that revocation of the antidumping duty order on brass sheet and strip from Germany would likely lead to continuation or recurrence of dumping.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1293 and (202) 482-3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2011, the Department initiated the third sunset review of the antidumping duty order on brass sheet and strip from Germany, pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review*, 76 FR

11202 (March 1, 2011). The Department received a notice of intent to participate from domestic interested parties, GBC Metals, LLC, of Global Brass and Copper, Inc., doing business as Olin Brass; Heyco Metals, Inc.; Luvata North America, Inc.; PMX Industries, Inc.; Revere Copper Products, Inc.; and International Association of Machinists and Aerospace Workers, United Auto Workers (Local 2367 and Local 1024), and United Steelworkers AFL-CIO CLC (collectively, "Petitioners"), within the deadline specified in 19 CFR 351.218(d)(1)(i). Petitioners claimed interested party status under section 771(9)(C) of the Act as a manufacturer, producer, or wholesaler in the United States of a domestic like product, and under section 771(9)(D) of the Act as a certified union or recognized union or group of workers representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product.

On March 31, 2011, the Department received substantive responses from Petitioners. In addition to meeting the requirements specified in 19 CFR 351.218(d)(3)(i), Petitioners provided information on the volume and value of exports of brass sheet and strip from Germany. On March 31, 2011, the Department also received a substantive response from respondent interested parties in Germany, Wieland-Werke AG, Schwermetal Halbzeugwerk GmbH & Co., KG, and Messingwerk Plettenberg Herfeld & Co., KG (collectively, "Respondents"). Pursuant to 19 CFR 351.302(b), Petitioners and Respondents were granted an extension until April 12, 2011, to file rebuttal comments to the substantive responses. These comments were submitted on April 12, 2011.

On April 14, 2011, the Department released U.S. Customs and Border Protection ("CBP") data on U.S. imports of brass sheet and strip from Germany to interested parties under the terms of the administrative protective order. On April 25, 2011, Petitioners and Respondents submitted comments on the CBP import data. On May 2, 2011, Petitioners submitted rebuttal comments, and on May 6, 2011, Respondents submitted rebuttal comments. On May 9, 2011, Petitioners submitted surrebuttal comments.

Section 351.218(e)(1)(ii)(A) of the Department's regulations provides that the Secretary normally will conclude that respondent interested parties have adequately responded to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting on average for more than 50

percent, by volume (or value basis, if appropriate), of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. On June 7, 2011, the Department determined that Petitioners' and Respondents' responses constituted adequate responses to the notice of initiation. See Memorandum from Susan H. Kubbach, Director, AD/CVD Operations, Office 1, to Edward C. Yang, Acting Deputy Assistant Secretary for AD/CVD Operations entitled "Adequacy Determination: Third Five-Year ('Sunset') Review of the Antidumping Duty Order on Brass Sheet and Strip from Germany," dated June 7, 2011. In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order and notified the International Trade Commission. See Letter from James Maeder, Director, Office 2, AD/CVD Operations to Ms. Catherine DeFilippo, Director, Office of Investigations, U.S. International Trade Commission, dated June 10, 2011.

Scope of the Order

The product covered by the order is brass sheet and strip, other than leaded and tinned brass sheet and strip. The chemical composition of the covered product is currently defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000. The order does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the product covered by the order has a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (transverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 7409.21.00 and 7409.29.00.

Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the "Issues and Decision Memorandum for the Sunset Review of the Antidumping Duty Order on Brass Sheet and Strip from Germany; Preliminary Results" from Gary Taverman, Acting Deputy Assistant

Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration ("Decision Memorandum"), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memorandum are the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order is revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order on brass sheet and strip from Germany would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/producers/exporters	Margin (percent)
Wieland-Werke AG	3.81
All Others	7.30

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Consistent with 19 CFR 351.310(d)(1), any hearing, if requested, will generally be held two days after the scheduled date for submission of rebuttal briefs, in accordance with 19 CFR 351.309(d). Interested parties may submit case briefs no later than 50 days after the date of publication of these preliminary results of review, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case brief, unless the Secretary alters this time limit. See 19 CFR 351.309(d). The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than January 25, 2012.

This five-year ("Sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 19, 2011.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011-24664 Filed 9-23-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA723

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Habitat and Environmental Protection Advisory Panel (AP) in Charleston, SC.

DATES: The meeting will take place November 15-16, 2011. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Charleston Marriott Hotel, 170 Lockwood Blvd., Charleston, SC 29403; telephone: (800) 968-3569; fax: (843) 723-0276.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571-4366 or toll free (866) SAFMC-10; fax: (843) 769-4520; e-mail: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: Members of the Habitat and Environmental Protection AP will meet from 9 a.m. until 5 p.m. on November 15, 2011 and from 8:30 a.m. until 5 p.m. on November 16, 2011.

The meeting will focus on further facilitating the Council's habitat conservation efforts, the move to ecosystem-based management strategies, and the regional applications of marine and spatial planning and management. Topics to be addressed at the meeting include: a regional mapping strategy based on managed species and habitat needs; an overview of fisheries' oceanography needs; and an identification of priority fish, fish habitat and fishery research needs required for a proposed alternative energy facility in the South Atlantic. The AP will initiate the development of

support materials, revise conservation policies, and recommend management actions which implement fishing and non-fishing conservation provisions of the Magnuson-Stevens Act and the Fishery Management Plan that supports the Comprehensive Ecosystem-Based Amendments.

An Eco-Regional Partner Coordination meeting will be integrated with the AP meeting on November 16, 2011. Invited guests include representatives from: the Governors South Atlantic Alliance; the Southeast Aquatic Resource Partnership; the Southeast Coastal Ocean Observing Regional Association; the South Atlantic Landscape Conservation Cooperative; the USGS Southeast Climate Science Center; the Navy Fleet Forces Command; the Bureau of Ocean Energy Management, Regulation and Enforcement; and others. Topics to be addressed at the integrated meeting include: coordination of management initiatives between the Council and other agencies; and the development of a South Atlantic Habitat and Ecosystem Digital Dashboard, created in cooperation with the Florida Fish and Wildlife Research Institute.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: September 21, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011-24591 Filed 9-23-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Department of Defense, Uniformed Services University of the Health Sciences (USU).

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of

Regents of the Uniformed Services University of the Health Sciences.

DATES: Tuesday, October 25, 2011, from 8:30 a.m. to 11:30 a.m.

ADDRESSES: Hyatt Regency Chesapeake Bay, 100 Heron Boulevard, Cambridge, Maryland 21613.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Officer, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone: 301-295-3066.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held August 9, 2011; recommendations regarding the approval of faculty appointments and promotions in the School of Medicine; recommendations regarding awarding master's degrees in the Graduate School of Nursing; and recommendations regarding the awarding of master's and doctoral degrees in the biomedical sciences and public health. The University President will also present a report. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165) and the availability of space, this meeting is completely open to the public. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Janet S. Taylor at the address and phone number in **FOR FURTHER INFORMATION CONTACT**.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address listed in **FOR FURTHER INFORMATION CONTACT**. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Official will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally

present their issues during the October 2011 meeting or at a future meeting.

Dated: September 21, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011-24595 Filed 9-23-11; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Military Family Readiness Council (MFRC)

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92-463, as amended, notice is hereby given of a forthcoming meeting of the Department of Defense Military Family Readiness Council (MFRC). The purpose of the Council meeting is to review the military family programs which will be the focus for the Council for next year, review the status of warrior care, and address selected concerns of military family organizations.

The meeting is open to the public, subject to the availability of space. Persons desiring to attend may contact Ms. Melody McDonald at 571-256-1738 or e-mail

FamilyReadinessCouncil@osd.mil no later than 5 p.m. on Tuesday, October 11, 2011 to arrange for parking and escort into the conference room inside the Pentagon.

Interested persons may submit a written statement for consideration by the Council. Persons desiring to submit a written statement to the Council must notify the point of contact listed below no later than 5 p.m., Wednesday, October 12, 2011.

DATES: October 17, 2011, from 3:30 p.m.-5 p.m.

ADDRESSES: Pentagon Conference Center M1 (escorts will be provided from the Pentagon Metro entrance).

FOR FURTHER INFORMATION CONTACT: Ms. Melody McDonald or Ms. Betsy Graham, Office of the Deputy Under Secretary (Military Community & Family Policy), 4000 Defense Pentagon, Room 2E319, Washington, DC 20301-4000. Telephones (571) 256-1738; (703) 697-9283 and/or e-mail: *FamilyReadinessCouncil@osd.mil*.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Monday, 17 October 2011

Welcome & Administrative Remarks.
Review and Comment on Council
Action from December meeting.
Priority Areas Briefings.
Intentions for the 2011 activities and
meetings.
Closing Remarks.
Note: Exact order may vary.

Dated: September 21, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 2011-24599 Filed 9-23-11; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Department of the Air Force**

[Docket ID USAF-2011-0023]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Air Force is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on October 26, 2011 unless comments are received that would result in a contrary determination.

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, Second 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. Charles Shedrick, Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/

XCPPF, 1800 Air Force Pentagon, Washington, DC 20330-1800, or by phone at (703) 696-6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force 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 specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are 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: September 21, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

F036 AFMC L**SYSTEM NAME:**

Air Force Integrated Personnel and Pay System (AF-IPPS) (June 16, 2011, 76 FR 35195).

CHANGES:

* * * * *

SYSTEM LOCATION:

Add: DISA Oklahoma City OKC-RACE Support, 8705 Industrial Blvd., Tinker AFB, OK 73145-3336.

* * * * *

F036 AFMC L**SYSTEM NAME:**

Air Force Integrated Personnel and Pay System (AF-IPPS).

SYSTEM LOCATION(S):

Command, Control, Communications and Computers Enterprise Integration Facility (CEIF), 15 Elgin St., Hanscom Air Force Base, MA 01731-3000.

DISA Oklahoma City OKC-RACE Support, 8705 Industrial Blvd., Tinker AFB, OK 73145-3336.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Air Force, Air Force Reserve, and Air National Guard personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal Information: Individual's name, rank/grade, address, date of birth, eye color, height, weight, place of birth, Social Security Number (SSN), and similar personal identifiers for beneficiary/dependant purposes;

driver's license number, security clearance level, office location, assigned user name and security questions, local and home of record addresses, phone numbers and emergency contact information.

PERSONNEL INFORMATION:

Evaluation and review history, enrollment, participation, status and outcome information for personnel programs, service qualification and performance measures, types of orders, accomplishments, skills and competencies, career preferences, contract information related to accession and Oath of Office, enlistment and re-enlistment, and separation information, benefits eligibility, enrollment, designations and status information, Uniform Code of Military Justice (UCMJ) actions summarizing court martial, non-judicial punishments, and similar or related documents. Circumstances of an incident the member was involved in and whether he or she is in an injured, wounded, seriously wounded, or ill duty status from the incident.

DUTY RELATED INFORMATION:

Duty station, employment and job related information and history, deployment information, work title, work address and related work contact information (e.g., phone and fax numbers, e-mail address), supervisor's name and related contact information.

EDUCATION AND TRAINING:

Graduation dates and locations, highest level of education, other education, training and school information including courses and training completion dates.

PAY ENTITLEMENT AND ALLOWANCES:

Pay information including earnings and allowances, additional pay (bonuses, special, and incentive pays), payroll computation, balances and history with associated accounting elements, leave balances and leave history.

DEDUCTIONS FROM PAY:

Tax information (Federal, state and local) based on withholding options, payroll deductions, garnishments, savings bond information including designated owner, deductions, and purchase dates, thrift savings plan participation.

OTHER PAY-RELATED INFORMATION:

Direct deposit information including financial institution name, routing number, and account information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113 note, Secretary of Defense; 10 U.S.C. 8013, Secretary of the Air Force; 37 U.S.C. Pay and Allowances of the Uniformed Services; 10 U.S.C., Armed Forces; Under Secretary of Defense for Personnel and Readiness; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Air Force Integrated Personnel and Pay System (AF-IPPS) fully integrates military personnel and pay capabilities for all Active Duty Air Force, Air National Guard, and Air Force Reserves. The system provides a single record of service for each officer/enlisted member and will provide Combatant Commanders real-time accurate force strength and readiness, better tracking of personnel into and out of theaters of operations, enhanced mission planning and support. This single record of service will become the Air Force's authoritative source of data used to populate the Department of Defense's data bases via the Enterprise Information Web (EIW). AF-IPPS will also allow Air Force Manpower and Personnel office to be aligned with the Air Force's strategic vision and provide a solution with the adaptability to effectively manage Air Force personnel in operational concepts of mobilization, activation, contingency operations, requirements, and assignment actions.

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 of 1974, these records contained therein may specifically be disclosed outside the Department of Defense (DoD) as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Health and Human Services, and Selective Service Administration in the performance of their official duties related to eligibility, notification, and assistance in obtaining benefits for which members, former members or retiree may be eligible.

To officials and employees of the Department of Veterans Affairs in the performance of their official duties related to approved research projects, and for processing and adjudicating claims, determining eligibility, notification, and assistance in obtaining benefits and medical care for which members, former members, retiree and family members/annuitants may be eligible.

To the Department of Veterans Affairs to provide information regarding a service-member's record or family member for the purposes of supporting eligibility processing for the Service-member's Group Life Insurance program.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans bonuses and other benefits and entitlements.

To officials and employees of the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Military Service. Access will be limited to those portions of the member's record required to effectively assist the member.

To the U.S. Citizenship and Immigration Services for use in making alien admission and naturalization inquiries. To the Social Security Administration to obtain or verify Social Security Numbers or to substantiate applicant's credit for social security compensation.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty military service of Members of Congress. Access is limited to those portions of the member's record required to verify time in service. To the widow or widower, dependent, or next-of-kin of deceased members to settle the affairs of the deceased member. The individuals will have to verify relationship by providing a birth certificate, marriage license, death certificate, or court document as requested/required to prove identity.

To governmental agencies for the conduct of computer matching agreements for the purpose(s) of determining eligibility for Federal benefit programs, to determine compliance with benefit program requirements and to recover improper payments or delinquent debts under a Federal benefit program. To Federal and state licensing authorities and civilian certification boards, committees and/or ecclesiastical endorsing organizations for the purposes of professional credentialing (licensing and certification) of lawyers, chaplains and health professionals.

To Federal agencies such as the National Academy of Sciences, for the

purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

To the officials and employees of the Department of Labor in the performance of their official duties related to employment and compensation.

Note: Disclosure to consumer reporting agencies.

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number (SSN)); the amount, status and history of the claim, and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

The DoD "Blanket Routine Uses" set forth at the beginning of the Air Force's compilation of the System of Records Notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Individual's name, Social Security Number (SSN), and date of birth.

SAFEGUARDS:

Physical entry will be restricted by the use of locks, guards, and will be accessible only to authorized personnel with a need-to-know. Access to personal data will be limited to person(s) responsible for maintaining and servicing AF-IPPS data in performance of their official duties and who are properly trained, screened and cleared for a need-to-know. Access to personal data will be further restricted by encryption and the use of Common Access Card (CAC) and/or strong password, which are changed

periodically according to DoD and Air Force policies.

RETENTION AND DISPOSAL:

Those records designated as temporary in the prescribing directive remain in the records until their obsolescence (superseded, member terminates status or retires) when they are removed and provided to the individual.

Unfavorable communications in the Open Systems Research Group (OSRG) are transferred to the Air Reserve Component and retained for one year following an officer's termination of status or destroyed if the officer retires or dies.

Those documents designated as permanent remain in the military personnel records system permanently and are retired with the master personnel record group.

SYSTEM MANAGER(S) AND ADDRESS:

Program Director, AFMC/ESC/HIS/AF-IPPS, Bldg 1102C, 3rd Floor 29 Randolph Rd., Hanscom AFB, MA 01731-3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Program Director, AFMC/ESC/HIS/AF-IPPS, Bldg 1102C, 29 Randolph Rd., Hanscom AFB, MA 01731-3000.

For verification purposes, individuals should provide their full name, Social Security Number (SSN), 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:

Individuals seeking access to records about themselves contained in the system of records should address written inquiries Air Force Records—Air Force Personnel Center, HQ AFPC/DPSSRP, 550 C Street West, Suite 19, Randolph AFB, TX 78150-4721.

For verification purposes, individuals should provide their full name, Social Security Number (SSN), 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)'.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data contained in this system is collected from the individuals and current Air Force Human Resource Offices and integrated pay systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011-24645 Filed 9-23-11; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.
ACTION: Notice.

SUMMARY: The inventions listed below are those in which the United States Government as represented by the Secretary of the Navy has an ownership interest and are made available for licensing by the Department of the Navy. U.S. Patent No. 7,679,410: A Method for Improving the Efficiency and Reliability of a Broadband Transistor Switch for Periodic Switching Applications Issued 3/16/2010//U.S. Patent No. 7,679,999: Marine Acoustic Sensor Assembly Issued 3/16/2010//U.S. Patent No. 7,685,862: Target

System Giving Accuracy and Energy Issued 3/30/2010//U.S. Patent No. 7,690,309: Supercavitating Vehicle Control Issued 4/6/2010//U.S. Patent No. 7,691,798: Coating to Reduce Friction on Skis and Snow Boards Issued 4/6/2010//U.S. Patent No. 7,721,843: Visual Acoustic Device Issued 5/25/2010//U.S. Patent No. 7,734,755: Interactive Data Fault Localization System and Method Issued 6/8/2010//U.S. Patent No. 7,755,326: Battery Monitoring and Charging System Issued 7/13/2010//U.S. Patent No. 7,779,772: Submarine Short-Range Defense System Issued 8/24/2010//U.S. Patent No. 7,782,712: A Method to Estimate Local Towed Array Angles Using Flush Mounted Hot Film Wall Shear Sensors Issued 8/24/2010//U.S. Patent No. 7,800,978: Method for Real Time Matched Field Processing Issued 9/21/2010//U.S. Patent No. 7,802,474: Fiber Optic Laser Accelerometer Issued 9/28/2010//U.S. Patent Application Ser. No. 07/926115: Semi-Closed Brayton Cycle Power System Direct Combustion Heat Transfer Filed 8/7/1992//U.S. Patent No. 7,804,454: Active High Frequency Transmitter Antenna Assembly Issued 9/28/2010//U.S. Patent No. 7,832,998: Controlled Skin Formation for Foamed Extrudate Issued 11/16/2010//U.S. Patent No. 7,861,977: Adaptive Material Actuators for Coanda Effect Circulation Control Slots Issued 1/4/2011//U.S. Patent No. 7,865,836: Geospatial Prioritized Data Acquisition Analysis and Presentation Issued 1/4/2011//U.S. Patent No. 7,868,833: An Ultra Wideband Buoyant Cable Antenna Element Issued 1/11/2011//U.S. Patent No. 7,869,910: Autocatalytic Oscillators for Animal-Like Locomotion in Small Underwater Vehicles Issued 1/11/2011//U.S. Patent No. 7,878,873: Variable Orifice Propulsor Issued 2/1/2011//U.S. Patent No. 7,881,156: Method to Estimate Towed Array Angles Issued 2/1/2011//U.S. Patent No. 7,884,592: An Energy Efficient Method for Changing the Voltage of a DC Source to Another Voltage in Order to Supply a Load That Requires a Different Voltage Issued 2/8/2011//U.S. Patent No. 7,886,728: System and Method for Controlling the Power Output of an Internal Combustion Engine Issued 2/15/2011//U.S. Patent No. 7,906,340: Method for Quantitative Determination of Hydrogen Peroxide Using Potentiometric Titration Issued 3/15/2011//U.S. Patent No. 7,924,654: System for Beamforming Acoustic Buoy Fields Issued 4/12/2011//U.S. Patent No. 7,926,275: Closed Brayton Cycle Direct Contact Reactor/Storage Tank With Chemical Scrubber Issued 4/19/2011//U.S. Patent No. 7,926,276: Closed

Cycle Brayton Propulsion System With Direct Heat Transfer Issued 4/19/2011//U.S. Patent No. 7,926,587; Explosive Water Jet With Precursor Bubble Issued 4/19/2011//U.S. Patent No. 7,929,375; Method and Apparatus for Improved Active Sonar Using Singular Value Decomposition Filtering Issued 4/19/2011//U.S. Patent No. 7,937,930; Semiclosed Brayton Cycle Power System With Direct Heat Transfer Issued 5/10/2011//U.S. Patent No. 7,938,077; Hydrogen Generator Apparatus for an Underwater Vehicle Issued 5/10/2011//U.S. Patent No. 7,940,602; Automatic Depth Sounder (Fathometer) Electronic Chart Comparator Issued 5/10/2011//U.S. Patent No. 7,951,339; Closed Brayton Cycle Direct Contact Reactor/Storage Tank With O₂ Afterburner Issued 5/31/2011//U.S. Patent No. 7,952,530; Serpentine Buoyant Cable Antenna Issued 5/31/2011//U.S. Patent No. 7,954,442; Towed Array Deployment System for Unmanned Surface Vehicle Issued 6/7/2011//U.S. Patent No. 7,966,936; Telescoping Cavitator Issued 6/28/2011//U.S. Patent No. 7,975,614; Acoustic Shotgun System Issued 7/12/2011//U.S. Patent No. 7,985,924; Coaxial Transducer Issued 7/26/2011//U.S. Patent No. 8,006,619; Underwater Acoustic Tracer System Issued 8/30/2011.

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Head, Technology Partnerships Office, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Newport, RI 02841-1703, telephone 401-832-8728, e-mail Theresa.baus@navy.mil.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: September 20, 2011.

L.R. Almand,

Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2011-24679 Filed 9-23-11; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Enhanced Energy Group, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant a revocable, nonassignable exclusive license to Enhanced Energy Group, LLC. The proposed license is an exclusive license to practice several inventions throughout the United States, the

District of Columbia, the Commonwealth of Puerto Rico, and all other United States territories and possessions. The Secretary of the Navy has an ownership interest in these inventions, and they are covered by U.S. Patent No. 7,926,275: Closed Brayton Cycle Direct Contact Reactor/Storage Tank With Chemical Scrubber//U.S. Patent No. 7,926,276: Closed Cycle Brayton Propulsion System With Direct Heat Transfer//U.S. Patent No. 7,937,930: Semiclosed Brayton Cycle Power System With Direct Heat Transfer//U.S. Patent No. 7,951,339: Closed Brayton Cycle Direct Contact Reactor/Storage Tank With O₂ Afterburner//U.S. Patent App. Ser. No. 07/926115: Semi-Closed Brayton Cycle Power System Direct Combustion Heat Transfer.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 11, 2011.

ADDRESSES: Written objections are to be filed with the Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg 990, Code 07TP, Newport, RI 02841.

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Head, Technology Partnerships Office, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Bldg. 990, Code 07TP, Newport, RI 02841, telephone 401-832-8728, or e-mail heresa.baus@navy.mil.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: September 19, 2011.

J.M. Beal,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011-24695 Filed 9-23-11; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a 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, October 12, 2011; 2 p.m.-4 p.m.

ADDRESSES: Homewood Suites, 20 Buffalo Thunder Trail, Pojoaque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995-0393; Fax (505) 989-1752 or e-mail: msantistevan@doeal.gov.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

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

- Welcome and Introductions,
- Committee Business Items:
 - Approve October 12, 2011, Meeting Agenda,
 - Approve August 20, 2011, Committee Meeting Minutes.
- New Business:
 - Recommendations in Progress,
 - Other Items.
- Old Business,
- Discussion: Buckman Well Alternative Monitoring Plan,
 - Presentation: Colloidal Transplant,
 - Update from Co-Deputy Designated Federal Officers,

- Discussion: Upcoming Meetings and Activities,
- Public Comment Period,
- Adjournment.

Public Participation: The NNM CAB'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/2-meetings/meetings.htm>.

Issued at Washington, DC on September 20, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011-24629 Filed 9-23-11; 8:45 am]

BILLING CODE 6405-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. 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, October 12, 2011, 5 p.m.

ADDRESSES: Las Vegas Country Club, 3000 Joe W. Brown Boulevard, Las Vegas, Nevada 89109.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657-9088; Fax (702) 295-5300 or E-mail: nssab@nv.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Comment Development—Nevada National Security Site Site-Wide Environmental Impact Statement

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request 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 to Denise Rupp at the address listed above or at the following Web site: <http://nv.energy.gov/nssab/MeetingMinutes.aspx>.

Issued at Washington, DC on September 20, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011-24616 Filed 9-23-11; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 12, 2011; 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT:

Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM-90, Oak Ridge, TN 37831. Phone (865) 576-4025; Fax (865) 241-1984 or e-mail: halseypj@oro.doe.gov or check the Web site at www.oakridge.doe.gov/em/ssab.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will be an update on Bear Creek Valley on the Oak Ridge Reservation.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Patricia J. Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Patricia J. Halsey 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 Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: <http://>

www.oakridge.doe.gov/em/ssab/minutes.htm.

Issued at Washington, DC on September 21, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011-24614 Filed 9-23-11; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Big Eddy-Knight Transmission Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to implement the Big Eddy-Knight Transmission Project in Wasco County, Oregon and Klickitat County, Washington. Construction of the Big Eddy-Knight Transmission Project will accommodate long-term firm transmission requests that BPA has received by increasing BPA's 500-kV transmission capability to move power from the east side of the Cascade Mountains (along the Oregon/Washington border) to load centers (such as Portland, Oregon) on the west side of the Cascades and to major transmission lines serving California.

As described in the Big Eddy-Knight Transmission Project Final Environmental Impact Statement (EIS) (DOE/EIS-0421, July 2011), this project consists primarily of constructing a new, approximately 28-mile-long, 500-kilovolt (kV) transmission line and ancillary facilities between BPA's existing Big Eddy Substation in The Dalles, Oregon, to a proposed new Knight Substation that would be connected to an existing BPA line about 4 miles northwest of Goldendale, Washington. For the transmission line, BPA has decided to build East Alternative Option 3. For the first 14 miles, the line will use double-circuit towers (combining the new line and an existing line on one set of towers) mostly on existing right-of-way. The remaining 14 miles of the new line will be built with single-circuit towers in a newly-established 150-foot wide transmission line right-of-way. BPA has also decided to build the small (about 1 mile) realignment of the East Alternative on the Oregon side of the Columbia River, as described in the final EIS. For the proposed new Knight Substation, BPA has decided to build Knight

Substation on Site 1, which is on private property about 0.5 mile west of Knight Road. For the fiber optic cable necessary for system communications, BPA has decided to build the Loop Back Option, which will string fiber optic cable on the new transmission towers from BPA's Big Eddy Substation to the new Knight Substation and back again. The project also includes new equipment at BPA's existing Big Eddy and Wautoma substations. BPA will install about 134 new lattice-steel transmission towers that will have an average span length between towers of about 1,200 feet. The double-circuit towers that will be used for the first 14 miles will range in height from about 170-250 feet tall; the single-circuit towers that will be used for the last 14 miles will be about 108-200 feet tall. The towers on either side of the Columbia River will be about 407 feet tall on the Oregon side and 232 feet tall on the Washington side.

The conductor, fiber optic cable, and overhead ground wire for the new transmission line will be placed on these towers, and counterpoise (which takes any lightning charge from the overhead ground wire and dissipates it into the earth) will be buried in the ground at select towers. Marker balls will be placed on the overhead ground wire across the Columbia River and bird diverters will be installed on overhead ground wire at select locations. The towers on either side of the Columbia River will have lighting for aircraft safety. Road construction will include about 16 miles of new road, 9 miles of temporary road, 13 miles of existing road improvements, and 62 culverts in intermittent streams (many stream crossings will have more than 1 culvert). In addition, portions of county roads that will be used to access the line route will be improved as necessary.

All mitigation measures identified in the EIS that are applicable to the selected alternative are adopted.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1-800-622-4520. The ROD and EIS are also available on our Web site, <http://www.bpa.gov/go/BEK>.

FOR FURTHER INFORMATION CONTACT: Stacy Mason, Bonneville Power Administration—KEC-4, P.O. Box 3621, Portland, Oregon 97208-3621; toll-free telephone number 1-800-622-4519; fax number 503-230-5455; or e-mail slmason@bpa.gov.

Issued in Portland, Oregon, on September 16, 2011.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 2011-24610 Filed 9-23-11; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF-018]

Energy Conservation Program for Consumer Products: Publication of the Extension of Interim Waiver Granted to Samsung Electronics America, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of extension of interim waiver.

SUMMARY: On March 25, 2011, the Department of Energy (DOE) published in the *Federal Register* a petition for waiver and notice granting an application for interim waiver to Samsung Electronics America, Inc. (Samsung) from energy efficiency test procedure requirements that are applicable to residential refrigerators and refrigerator-freezers. In today's action, DOE is extending the interim waiver for 180 days.

FOR FURTHER INFORMATION CONTACT:

Dr. Michael G. Raymond, U.S.

Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

Telephone: (202) 586-9611. E-mail: Michael.Raymond@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, 1000 Independence Avenue, SW., Washington, DC 20585-0103, (202) 586-7796; E-mail: Elizabeth.Kohl@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On March 18, 2011, DOE granted to Samsung an interim waiver from the energy efficiency test procedure requirements in 10 CFR part 430 that are applicable to Samsung's electric refrigerators and refrigerator-freezers that incorporate multiple defrost cycles, and requested comments on Samsung's petition. 76 FR 16760 (March 25, 2011). Pursuant to 10 CFR 430.27(h), an interim waiver will terminate 180 days after issuance or upon the determination on the petition for waiver, whichever occurs first. An

interim waiver may be extended by DOE for 180 days. Notice of such extension and/or any modification of the terms or duration of the interim waiver shall be published in the **Federal Register** and shall be based on relevant information contained in the record and any comments received subsequent to issuance of the interim waiver.

On August 17, 2011, Samsung requested an extension of its interim waiver. DOE recently published a notice reopening the comment period on its interim final rule for the refrigerator test procedure. 76 FR 57612 (Sept. 15, 2011). DOE intends to consider the comments received in response to this notice before publishing a decision and order concerning Samsung's petition for waiver from the energy efficiency test procedure requirements for residential refrigerators and refrigerator-freezers in 10 CFR part 430, which are applicable to Samsung's electric refrigerators and refrigerator-freezers that incorporate multiple defrost cycles. Therefore, DOE has determined that it is appropriate to grant an extension of the interim waiver to Samsung for an additional 180 days, or until March 12, 2012, or until the determination on the petition for waiver, whichever occurs first.

Issued in Washington, DC, on September 20, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011-24611 Filed 9-23-11; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2011-0038; FRL-8889-5]

Primus Solutions, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Primus Solutions, Inc., in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Primus Solutions, Inc., has been awarded multiple contracts to

perform work for OPP, and access to this information will enable Primus Solutions, Inc., to fulfill the obligations of the contract.

DATES: Primus Solutions, Inc., will be given access to this information on or before September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-8338, steadman.mario@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2011-0038. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

II. Contractor Requirements

Under the contract number EP-W-11-024, the contractor will provide assistance to Antimicrobials Division reviewers to process applications for new registrations, new uses, amendments, and notifications within the time frame set forth by the Agency in order to meet the mandated timelines required under the Food Quality Protection Act and the Pesticide Registration Improvement Renewal Act of 2007. This contract involves no subcontractors.

OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject

of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Primus Solutions, Inc., prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Primus Solutions, Inc., is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Primus Solutions, Inc., until the requirements in this document have been fully satisfied. Records of information provided to Primus Solutions, Inc., will be maintained by EPA Project Officers for these contracts. All information supplied to Primus Solutions, Inc., by EPA for use in connection with these contracts will be returned to EPA when Primus Solutions, Inc., has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: September 14, 2011.

Oscar Morales,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2011-24285 Filed 9-23-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9471-3]

Notice of Webcast Meeting of the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's

(EPA) Environmental Financial Advisory Board (EFAB) will hold a Webcast Meeting on October 18, 2011. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

The purpose of the meeting is to hear from informed speakers on environmental finance issues, proposed legislation, Agency priorities and to discuss progress with work projects under EFAB's current Strategic Action Agenda; and review and consider recent requests for assistance from a number of EPA offices.

Environmental Finance topics expected to be discussed include: financing clean air technology; financing tribal environmental programs; and transit-oriented development financing.

The webcast meeting is open to the public. All members of the public who wish to participate in the webcast should register in advance, no later than Friday, October 7, 2011.

DATES: Tuesday, October 18, 2011 from 1 p.m.–5 p.m.

Registration and Information Contact

Please register at <http://www.epa.gov/efinpage/efabmeeting.htm>.

The webcast will be ADA compliant closed captioning. For information on access or services for individuals with disabilities, or to request accommodations for a person with a disability, please contact Sandra Williams, U.S. EPA, at (202) 564-4999 or williams.sandra@epa.gov, at least 10 days prior to the meeting, to allow as much time as possible to process your request.

Dated: September 20, 2011.

Joseph L. Dillon,
Director, Center for Environmental Finance.
[FR Doc. 2011-24643 Filed 9-23-11; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9471-6]

Farm, Ranch, and Rural Communities Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92-463, EPA gives notice of a meeting of the

Farm, Ranch, and Rural Communities Committee (FRRCC). The FRRCC is a policy-oriented committee that provides policy advice, information, and recommendations to the EPA Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities.

The purpose of this meeting is to advance discussion of specific topics of unique relevance to agriculture such as effective approaches to addressing water quality issues associated with agricultural production, in such a way as to provide thoughtful advice and useful insights to the Agency as it crafts environmental policies and programs that affect and engage agriculture and rural communities. A copy of the meeting agenda will be posted at <http://epa.gov/ofacmo/frcc/meetings.htm>.

DATES: The Farm, Ranch, and Rural Communities Committee will hold an open meeting on Wednesday, October 26, 2011 from 8:30 a.m. (registration at 8 a.m.) until 6 p.m. Eastern Daylight Time, and on Thursday, October 27, 2011 from 8:30 a.m. (registration at 8 a.m.) until 2 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the Sheraton National Hotel, 900 South Orme Street, Arlington, VA 22204, Telephone: (703) 521-1900. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Alicia Kaiser, Designated Federal Officer, kaiser.alicia@epa.gov, 202-564-7273, US EPA, Office of the Administrator (1101A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the FRRCC should be sent to Alicia Kaiser, Designated Federal Officer, at the contact information above. All requests must be submitted no later than October 19, 2011.

Meeting Access: For information on access or services for individuals with disabilities, please contact Alicia Kaiser at 202-564-7273 or kaiser.alicia@epa.gov. To request accommodation of a disability, please contact Alicia Kaiser, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 19, 2011.
Alicia Kaiser,
Designated Federal Officer.
[FR Doc. 2011-24638 Filed 9-23-11; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 10, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Robert Clay Welch, Sugar Creek, Missouri; and James Ward Pollard, Independence, Missouri*, as trustees of the Robert E. Oliphant Revocable Trust u/t/a/dated November 10, 2010; to retain control of Country Agencies & Investments, Inc., and thereby indirectly retain control of Bank of Odessa, both in Odessa, Missouri, Commercial Bank of Oak Grove, Oak Grove, Missouri, and LaMonte Community Bank, LaMonte, Missouri.

Board of Governors of the Federal Reserve System, September 20, 2011.

Robert deV. Frierson,
Deputy Secretary of the Board.

[FR Doc. 2011-24567 Filed 9-23-11; 8:45 am]
BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will 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 October 21, 2011.

A. FEDERAL RESERVE BANK OF RICHMOND
(Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Eagle Bancorp, Inc.*, Bethesda, Maryland; to merge with Alliance Bankshares Corporation, Chantilly, Virginia, and thereby indirectly acquire Alliance Bank Corporation, Fairfax, Virginia.

Board of Governors of the Federal Reserve System, September 21, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011-24620 Filed 9-23-11; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("Commission" or "FTC").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through December 31, 2014, the current PRA clearance for information collection requirements contained in the

Commission's Business Opportunity Rule ("Rule"). The current clearance expires on December 31, 2011.

DATES: Comments must be submitted on or before November 25, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "16 CFR Part 437: Paperwork Comment, FTC File No. P114408" on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/BusinessOptionRulePRA> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Christine M. Todaro (202) 326-3711, Division of Marketing Practices, Room 286, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Business Opportunity Rule, 16 CFR part 437 (OMB Control Number 3084-0142).

The FTC invites comments on: (1) 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) 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 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.

The Rule is designed to ensure that prospective purchasers of a business opportunity receive information that will help them evaluate the opportunity that is presented to them. Part 437 was promulgated in March of 2007, concurrently with the amendment of the Franchise Rule. Part 437 mirrors the requirements and prohibitions of the original Franchise Rule, and imposes no additional disclosure or recordkeeping obligations or prohibitions.¹ The Rule requires business opportunity sellers to furnish to prospective purchasers a disclosure document that provides information relating to the seller, the seller's business, the nature of the proposed business opportunity, as well as additional information regarding any claims about actual or potential sales, income, or profits for a prospective business opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims. These requirements are subject to the PRA.

Estimated annual hours burden: 16,750 hours.

Based on a review of trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 2,500 business opportunity sellers, with perhaps about 10% of that total reflecting an equal amount of new and departing business entrants.

The burden estimates for compliance will vary depending on the particular business opportunity seller's prior experience with the original Franchise Rule. Staff estimates that 250 or so new business opportunity sellers will enter the market each year, requiring approximately 30 hours each to develop a Rule-compliant disclosure document. Thus, staff estimates that the cumulative annual disclosure burden for new business opportunity sellers will be approximately 7,500 hours. Staff further estimates that the remaining 2,250

¹ In March of 2008, the Commission published the Business Opportunity Rule Revised Notice of Proposed Rulemaking, 73 FR 16110 (March 26, 2008) ("Notice"). The Notice proposed amending the Business Opportunity Rule substantially, and would, among other things, reduce the number of required disclosures by sellers of business opportunities to prospective purchasers. Conversely, the Notice proposed amending the rule to expand the coverage of entities required to make disclosures to include a broader array of business opportunities than those covered by the original Franchise Rule. For now, however, only those businesses opportunities covered by the original Franchise Rule—such as vending machine and rack display opportunities—remain covered under part 437.

established business opportunity sellers will require no more than approximately 3 hours each to update their disclosure document. Accordingly, the cumulative estimated annual disclosure burden for established business opportunity sellers will be approximately 6,750 hours.

Business opportunity sellers may need to maintain additional documentation for the sale of business opportunities in states not currently requiring these records as part of their regulation of business opportunity sellers. This might entail an additional hour of recordkeeping per year. Accordingly, staff estimates that business opportunity sellers will cumulatively incur approximately 2,500 hours of recordkeeping burden per year (2,500 business opportunity sellers × 1 hour).

Thus, the total burden for business opportunity sellers is approximately 16,750 hours (7,500 hours of disclosure burden for new business opportunity sellers + 6,750 hours of disclosure burden for established business opportunity sellers + 2,500 of recordkeeping burden for all business opportunity sellers).

Estimated annual labor cost:
\$3,600,000.

Labor costs are determined by applying applicable wage rates to associated burden hours. Staff presumes an attorney will prepare or update the disclosure document at an estimated \$250 per hour.² As applied, this would yield approximately \$3,562,500 in labor costs attributable to compliance with the Rule's disclosure requirements ((250 new business opportunity sellers × \$250 per hour × 30 hours per seller) + (2,250 established business opportunity sellers × \$250 per hour × 3 hours per seller)).

Staff anticipates that recordkeeping would be performed by clerical staff at approximately \$15 per hour.³ At 2,500 hours per year for all affected business opportunity sellers (see above), this amounts to an estimated \$37,500 of recordkeeping cost. Thus, the combined labor costs for recordkeeping and disclosure for business opportunity sellers is approximately \$3,600,000.

Estimated non-labor cost: \$3,887,500.

Business opportunity sellers must also incur costs to print and distribute the disclosure document. These costs

vary based upon the length of the disclosures and the number of copies produced to meet the expected demand. Staff estimates that 2,500 business opportunity sellers print and mail 100 documents per year at a cost of \$15 per document, for a total cost of \$3,750,000 (2,500 business opportunity sellers × 100 documents per year × \$15 per document).

Business opportunity sellers must also complete and disseminate an FTC-required cover sheet that identifies the business opportunity seller, the date the document is issued, a table of contents, and a notice that tracks the language specifically provided in the Rule. Although some of the language in the cover sheet is supplied by the government for the purpose of disclosure to the public, and is thus excluded from the definition of "collection of information" under the PRA, see 5 CFR 1320.3(c)(2), there are residual costs to print and mail these cover sheets, including within them the presentation of related information beyond the supplied text. Staff estimates that 2,500 business opportunity sellers complete and disseminate 100 cover sheets per year at a cost of approximately \$0.55 per cover sheet, or a total cost of approximately \$137,500 (2,500 business opportunity sellers × 100 cover sheets per year × \$0.55 per cover sheet).

Accordingly, the cumulative non-labor cost incurred by business opportunity sellers each year attributable to compliance will be approximately \$3,887,500 (\$3,750,000 for printing and mailing documents + \$137,500 for completing and mailing cover sheets).

Request for Comment

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before November 25, 2011. Write "16 CFR part 437: Paperwork Comment, FTC File No. P114408" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social

Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).⁴ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/BusinessOptionRulePRA> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Web site.

If you file your comment on paper, write "16 CFR part 437: Paperwork Comment, FTC File No. P114408" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to

⁴ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

² Based upon staff's informal discussions with several franchises in various regions of the country.

³ Based on the "National Compensation Survey: Occupational Wages in the United States, 2010," U.S. Department of Labor, Bureau of Labor Statistics (May 2011), available at <http://www.bls.gov/news/ocs/sp/nctb1477.pdf>. Clerical estimates are derived from the above source data, rounded upward, for "new accounts clerks."

consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 25, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2011-24573 Filed 9-23-11; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A (Office of the Secretary), Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AE, Office of the Assistant Secretary for Planning and Evaluation (ASPE), as last amended at 66 FR 61341-42 dated September 30, 2002 and most recently at 73 FR 19977, dated April 16, 2010 and at 76 FR 19361-62, dated April 7, 2011. This notice establishes a fourth division under the Office of Health Policy (HP) and restate's HP's functional statement in its entirety. The changes are as follows:

I. *Under Section AE.20 Functions, deleted Paragraph B, Office of Health Policy (AEH), in its entirety and replace with the following:*

B. The Office of Health Policy (AEH)

The Office of Health Policy (HP) is responsible for policy development and coordination and for the conduct and coordination of research, evaluation, and data, on matters relating to health systems, services, and financing. Functions include policy and long-range planning; policy, economic, program and budget analysis; evaluation; review of regulations and development of legislation. Health policy matters includes public health, health services and systems, public and private health insurance, health care financing, health care quality, consumer health information, and the interaction among these matters and sectors. HP is responsible for developing and coordinating a health policy research, information, and analytical program to gain information concerning health services, public health, delivery systems and financing. The Office works closely with other ASPE and HHS offices on

these matters, coordinates and shares information across Federal agencies, and collaborates with the health policy and health services research community. HP works closely with the Department's Centers for Medicare & Medicaid Services, the Agency for Healthcare Research and Quality, the Health Resources and Services Administration, the Indian Health Service, The Office of the Assistant Secretary of Health, the Substance Abuse and Mental Health Services Administration, and other HHS agencies.

1. The Division of Health Care Financing Policy (AEH1) is responsible for policies and functions of the office concerning health care financing and health care costs, principally Federal health care financing related to the Department's Medicare program, including matters concerning structural changes and modernization for the long-term, such as drug benefits, coverage and eligibility, new technology, new delivery systems, and payments for services. This includes development of studies, policies, and mechanisms concerning the financing and delivery of health care for the Medicare population as well as evaluations of programs and delivery system innovations. The division monitors, analyzes, and maintains liaison with programs and policies in the Department and outside the Department that effect functions of the Division.

2. The Division of Public Health Services Policy (AEH2) is responsible for the functions of the office related to public health services and policies. The division conducts and develops analyses, studies, evaluations, and guidelines on matters such as: monitoring and addressing public health services resources and needs; assessing the design and effectiveness of health promotion/disease prevention endeavors; monitoring and addressing health disparities; projecting workforce needs; developing options for addressing workforce needs and shortages; developing options for improving the interaction between the medical services delivery system and population-based public health services; and addressing numerous other issues affecting both public and private healthcare services endeavors. The division monitors, analyzes, and maintains liaison with programs and policies both inside and outside the Department that effect functions of the Division's mission.

3. The Division of Health Care Access and Coverage Policy (AEH3) focuses on oversight of the private health insurance marketplace and the financing and

delivery of health care services for low-income populations. The division is responsible for the functions of the office with respect to private health insurance, the Medicaid program, the Children's Health Insurance Program, coverage for the uninsured, and other policies and programs to help low income individuals and families have access to health care services. This includes development of studies, policies, and mechanisms that integrate the financing and delivery of health care services for this population. This division will collaborate with the Division of Health Care Financing Policy on issues effecting populations who are dually eligible for Medicare and Medicaid and other crosscutting areas. The division monitors, analyzes, and maintains liaison with programs and policies in the Department and outside the Department that effect functions of the Division.

4. The Division of Health Care Quality and Outcomes Policy (AEH4) is responsible for functions related to quality measurement and improvement, performance reporting and performance incentives, and patient-centered outcomes research. This includes development of studies, policies, and mechanisms to support data infrastructure development to support outcomes research as well as developing and disseminating evidence relating to patient outcomes research. The division monitors, analyzes, and maintains liaison with programs and policies in the Department and outside the Department that effect functions of the Division.

II. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

Dated: September 19, 2011.

E.J. Holland, Jr.,

Assistant Secretary for Administration.

[FR Doc. 2011-24621 Filed 9-23-11; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Responsible Fatherhood Reentry Strategies Study—Discussion Guides.
OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services is proposing an information collection activity as part of a study of responsible fatherhood prisoner reentry pilot programs. This information collection will involve discussion of a range of topics with key informants in

grantee and partner organizations such as their organizational structure, program services, populations served, and specific approaches under the grant programs, as well as with individuals who participate, eligible nonparticipants, and family members about their circumstances and experiences.

Respondents: Semi-structured discussions will be held with administrators, managers and staff of responsible fatherhood prisoner reentry grant programs and of key partner or community agencies. Information may also be collected from participants, eligible non-participants, and family members.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Discussion Guides	150	1	1	150

Estimated Total Annual Burden Hours: 150.

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. *E-mail address:* OPREinfocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 20, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011-24536 Filed 9-23-11; 8:45 am]

BILLING CODE 4184-35-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0322]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requests for Inspection Under the Inspection by Accredited Persons Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. **DATES:** Fax written comments on the collection of information by October 26, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202-395-7285, or e-mailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0569. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleman, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-5156, Daniel.Gittleman@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed

collection of information to OMB for review and clearance.

Requests for Inspection Under the Inspection by Accredited Persons Program—(OMB Control Number 0910-0569)—(Extension)

Section 201 of the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107-250) amended section 704 of the Federal Food, Drug, and Cosmetic Act by adding subsection (g) (21 U.S.C. 374(g)). This amendment authorized FDA to establish a voluntary third-party inspection program applicable to manufacturers of class II or class III medical devices who meet certain eligibility criteria. In 2007, the program was modified by the Food and Drug Administration Amendments Act of 2007 by revising eligibility criteria and by no longer requiring prior approval by FDA. To reflect the revisions, FDA modified the title of the collection of information and on March 2, 2009, issued a guidance entitled "Manufacturer's Notification of the Intent to Use an Accredited Person Under the Accredited Persons Inspection Program Authorized by Section 228 of the Food and Drug Administration Amendments Act of 2007." This guidance supersedes the Agency's previous guidance regarding requests for third-party inspection and may be found on the Internet at <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm085187.htm>. This guidance is intended to assist device establishments in determining whether they are eligible to participate in the Accredited Persons (AP) Program and, if so, how to submit notification of their intent to use the program. The AP Program applies to manufacturers who currently market their medical devices in the United States and who also market or plan to market their devices in foreign countries. Such

manufacturers may need current inspections of their establishments to operate in global commerce.

There are approximately 8,000 foreign and 10,000 domestic manufacturers of medical devices. Approximately 5,000 of these firms only manufacture class I devices and are, therefore, not eligible for the AP Program. In addition, 40 percent of the domestic firms do not export devices and therefore are not

eligible to participate in the AP Program. Further, 10 to 15 percent of the firms are not eligible due to the results of their previous inspection. FDA estimates there are 4,000 domestic manufacturers and 4,000 foreign manufacturers that are eligible for inclusion under the AP Program. Based on communications with industry, FDA estimates that on an annual basis approximately 100 of these

manufacturers may use an AP in any given year.

In the **Federal Register** of May 23, 2011 (76 FR 29764), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

21 U.S.C. section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
374(g)	100	1	100	15	1,500

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-24582 Filed 9-23-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0275]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Certification to Accompany Drug, Biological Product, and Device Applications or Submissions (Form FDA 3674)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 26, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or e-mailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0616. Also include the FDA docket number found

in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150-400B, Rockville, MD 20850, 301-796-3794,

Jonnalynn.capezzuto@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance. Certification to Accompany Drug, Biological Product, and Device Applications or Submissions (Form FDA 3674)—(OMB Control Number 0910-0616)—Extension

The information required under section 402(j)(5)(B) of the Public Health Service Act (PHS Act) (42 U.S.C. 282(j)(5)(B)) is submitted in the form of a certification, Form FDA 3674, which accompanies applications and submissions currently submitted to FDA and is already approved by OMB. The OMB control numbers and expiration dates for submitting Form FDA 3674 under the following parts are: 21 CFR parts 312 and 314 (human drugs) are 0910-0014, expiring August 31, 2011, and 0910-0001, expiring May 31, 2011; 21 CFR parts 312 and 601 (biological products) are 0910-0014 and 0910-0338, expiring December 31, 2011; 21 CFR parts 807 and 814 (devices) are 0910-0120, expiring December 31, 2013, and 0910-0231, expiring December 31, 2013.

Title VIII of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110-85) amended the PHS Act by adding section 402(j) (42 U.S.C. 282(j)). The provisions require additional information to be submitted to the clinical trials data bank

(<http://ClinicalTrials.gov>)¹ previously established by the National Institutes of Health (NIH)/National Library of Medicine, including expanded information on clinical trials and information on the results of clinical trials. The provisions include responsibilities for FDA as well as several amendments to the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

One provision, section 402(j)(5)(B) of the PHS Act, requires that a certification accompany human drug, biological, and device product submissions made to FDA. Specifically, at the time of submission of an application under sections 505, 515, or 520(m) of the FD&C Act (21 U.S.C. 355, 360e, or 360j(m)), or under section 351 of the PHS Act (42 U.S.C. 262), or submission of a report under section 510(k) of the FD&C Act (21 U.S.C. 360(k)), such application or submission must be accompanied by a certification, Form FDA 3674, that all applicable requirements of section 402(j) of the PHS Act have been met. Where available, such certification must include the appropriate National Clinical Trial (NCT) numbers.

The proposed extension of the collection of information is necessary to satisfy the previously mentioned statutory requirement.

The importance of obtaining these data relates to adherence to the legal requirements for submissions to the clinical trials registry and results data bank and ensuring that individuals and organizations submitting applications or reports to FDA under the listed

¹ FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.

provisions of the FD&C Act or the PHS Act adhere to the appropriate legal and regulatory requirements for certifying to having complied with those requirements. The failure to submit the certification required by section 402(j)(5)(B) of the PHS Act, and the knowing submission of a false certification are both prohibited acts under section 301 of the FD&C Act (21 U.S.C. 331). Violations are subject to civil money penalties.

In January 2009, FDA issued "Guidance for Sponsors, Industry, Researchers, Investigators, and Food and Drug Administration Staff Certifications To Accompany Drug, Biological Product, and Device Applications/Submissions: Compliance with Section 402(j) of The Public Health Service Act, Added By Title VIII of The Food and Drug Administration Amendments Act of 2007" available at <http://www.fda.gov/RegulatoryInformation/Guidances/ucm125335.htm>. This guidance identified the applications and submissions that FDA considered should be accompanied by the certification form, Form FDA 3674. The applications and submissions noted in the guidance are reflected in the burden analysis.

I. Investigational New Drug Applications

FDA's Center for Drug Evaluation and Research (CDER) received 1,752 investigational new drug applications (INDs) and 11,769 clinical protocol IND amendments in fiscal year (FY) 2010. CDER anticipates that IND and clinical protocol amendment submission rates will remain at or near this level in the near future.

FDA's Center for Biologics Evaluation and Research (CBER) received 281 new INDs and 1,471 clinical protocol IND amendments in FY 2010. CBER anticipates that IND and clinical protocol amendment submission rates will remain at or near this level in the near future.

The estimated total number of submissions (new INDs and new protocol submissions) subject to mandatory certification requirements under section 402(j)(5)(B) of the PHS Act, is 13,521 for CDER plus 1,752 for CBER, or 15,273 submissions per year. The minutes per response is the estimated number of minutes that a respondent would spend preparing the information to be submitted to FDA under section 402(j)(5)(B) of the PHS Act, including the time it takes to enter the necessary information on the form.

Based on its experience with current submissions, FDA estimates that

approximately 15.0 minutes on average would be needed per response for certifications which accompany IND applications and clinical protocol amendment submissions. It is assumed that most submissions to investigational applications will reference only a few protocols for which the sponsor/applicant/submitter has obtained a NCT number from <http://ClinicalTrials.gov> prior to making the submission to FDA. It is also assumed that the sponsor/applicant/submitter has electronic capabilities allowing them to retrieve the information necessary to complete the form in an efficient manner.

II. Marketing Applications/Submissions

In 2010, CDER and CBER received 165 new drug applications (NDA)/biologics license applications (BLA)/resubmissions and 1,483 NDA/BLA amendments for which certifications are needed. CDER and CBER received 191 efficacy supplements/resubmissions to previously approved NDAs/BLAs in FY 2010. CDER and CBER anticipate that new drug/biologic applications/resubmissions and efficacy supplement submission rates will remain at or near this level in the near future.

FDA's Center for Devices and Radiological Health (CDRH) received a total of 892 new applications for premarket approvals (PMA), 510(k) submissions containing clinical information, PMA supplements, applications for humanitarian device exemptions (HDE) and amendments, for a total of 424 new applications/submissions in FY 2010. CDRH anticipates that application, amendment, supplement, and annual report submission rates will remain at or near this level in the near future.

FDA's Office of Generic Drugs (OGD) received 854 abbreviated new drug applications (ANDAs) in FY 2010. OGD received 495 bioequivalence amendments/supplements FY 2010. OGD anticipates that application, amendment, and supplement submission rates will remain at or near this level in the near future.

Based on its experience reviewing NDAs, BLAs, PMAs, HDEs, 510(k)s, and ANDAs and experience with current submissions of Form FDA 3674, FDA estimates that approximately 45.0 minutes on average would be needed per response for certifications which accompany NDA, BLA, PMA, HDE, 510(k), and ANDA marketing applications and submissions. It is assumed that the sponsor/applicant/submitter has electronic capabilities allowing them to retrieve the information necessary to complete the form in an efficient manner.

In the **Federal Register** of May 6, 2011 (76 FR 26305), FDA published a 60-day notice requesting public comment on the proposed collection of information. There were four comments submitted in response to the 60-day **Federal Register** notice. Only two comments were directly related to the information collection. One comment was unrelated to the information collection. The remaining comment requested that FDA define a term contained in section 402(j)(1)(A)(ii) of the PHS Act (42 U.S.C. 282(j)(1)(A)(ii)). The implementation of this provision, including defining any statutory terms, is the responsibility of NIH. NIH has indicated in the Unified Agenda that proposed rulemaking is anticipated in 2011. In addition, NIH has provided an elaboration of the definition of that term on its Web site at <http://prsinfo.clinicaltrials.gov/ElaborationsOnDefinitions.pdf>.

One of the comments that directly addressed the information collection commented on the utility of the information collected through Form FDA 3674 and requested that FDA consider a means to associate the NCT number with the study numbers. Since the enactment of FDAAA, FDA has been involved in a technological effort designed to accomplish what has been suggested by the comment. FDA is currently involved in designing a software/computer system that can link the information provided on the Form FDA 3674 with actions taken in relation to that study, a future marketing application, and future actions taken in relation to the approved medical product. Part of this effort is designed to provide NIH information which will be displayed on its Web site for each clinical trial for which specific information is provided. An additional aspect for the effort is designed to link this information internally for various purposes including compliance efforts. This commenter also proposed changes to the timing of the certification submissions accompanying INDs based upon the requirements for submission of clinical trial information to <http://ClinicalTrials.gov>. FDA appreciates the comment but has implemented the statutory requirements in the most efficient manner possible. The statute requires FDA to obtain the certification upon submission of an IND despite the fact that submission of clinical trial information to <http://ClinicalTrials.gov> generally is not required at the time an IND is required to be submitted. In order to collect information on trials that are not applicable clinical trials, as suggested by the comment, either a

statutory change or, possibly, rulemaking would be required.

The remaining comment contended that the estimates FDA used in its burden estimates should be adjusted significantly upward. We do not agree with the comment's conclusions. FDA has based the burden hours on the totality of the time needed for the information collection and not (as claimed by the commenter) on the completion of the form itself. As noted in our previous information collection and this one, we anticipated that entities submitting Form FDA 3674

would implement systems that would simplify collection of the information. We have received feedback based on submitters' experience over the past 3½ years that suggests these types of systems have been implemented. Furthermore, given the responsibilities required for registering and updating trials on <http://ClinicalTrials.gov> and current FDA requirements, unrelated to Form FDA 3674, for submission of trial information for marketing applications, the information required for completion of this form should be easy to compile. FDA's experience in responding to calls

on the form and questions presented at meetings and conferences does not accord with the practices noted in this comment and does not support the burden estimates proposed by the comment. In fact, the only other comment submitted directly related to the information collection indicated that the "estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used, seems reasonable."

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

FDA Center activity	No. of respondents (investigational applications)	No. of respondents (marketing applications)	No. of responses per respondent	Total annual responses	Average burden per response	Total hours
CDER						
New Applications (IND)	1,752	.....	1	1,752	0.25 (15 min.)	438
Clinical Protocol Amendments (IND)	11,769	.....	1	11,769	0.25 (15 min.)	2,943
New Marketing Applications/Resubmissions (NDA/BLA) .....	.....	157	1	157	0.75 (45 min.)	118
Clinical Amendments to Marketing Applications .....	.....	1,466	1	1,466	0.75 (45 min.)	1,100
Efficacy Supplements/Resubmissions .....	.....	166	1	166	0.75 (45 min.)	125
CBER						
New Applications (IND)	281	.....	1	281	0.25 (15 min.)	70
Clinical Protocol Amendments (IND)	1,471	.....	1	1,471	0.25 (15 min.)	368
New Marketing Applications/Resubmissions .....	.....	8	1	8	0.75 (45 min.)	6
Clinical Amendments to Marketing Applications .....	.....	17	1	17	0.75 (45 min.)	13
Efficacy Supplements/Resubmissions (BLA only) .....	.....	25	1	25	0.75 (45 min.)	19
CDRH						
New Marketing Applications (includes PMAs, HDEs, Supplements and 510(k)s expected to contain clinical data) .....	.....	892	1	892	0.75 (45 min.)	669
OGD						
Original Applications .....	.....	854	1	854	0.75 (45 min.)	641
BE Supplements/Amendments .....	.....	495	.....	.....	0.75 (45 min.)	372
Total .....	.....	.....	.....	.....	.....	6,882

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-24581 Filed 9-23-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0002]

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 17, 2011, from 8 a.m. to 5 p.m.

Location: Holiday Inn Washington-College Park, The Ballroom, 10000 Baltimore Ave., College Park, MD. The hotel telephone number is 301-345-6700.

Contact Person: Minh Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, Fax: 301-847-8533, e-mail: GIDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 17, 2011, the committee will provide recommendations to the Agency on the design and size of premarketing cardiovascular safety development programs necessary to support approval

of products in the class of serotonin (5-hydroxytryptamine) receptor 4 agonists for the proposed indications of chronic idiopathic (of unknown cause) constipation, constipation predominant irritable bowel syndrome, gastroparesis, and gastroesophageal reflux disease that does not respond to a proton pump inhibitor.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 2, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 25, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 26, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Minh Doan at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at

<http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 20, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011-24603 Filed 9-23-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0002]

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 16, 2011, from 8 a.m. to 5 p.m.

Location: Holiday Inn Washington-College Park, The Ballroom, 10000 Baltimore Ave., College Park, MD. The hotel telephone number is 301-345-6700.

Contact Person: Kristine T. Khuc, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, fax: 301-847-8533, e-mail: GIDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should

always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 16, 2011, the committee will discuss the design of clinical trials to evaluate the safety, efficacy, and durability of response with repeat treatment cycles of XIFAXAN (rifaximin), by Salix Pharmaceuticals, Inc., for irritable bowel syndrome with diarrhea.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 1, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 24, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 25, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristine T.

Khuc at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 20, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011-24602 Filed 9-23-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0002]

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee:

To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 4, 2011, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/ Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301-589-5200.

Contact Person: Minh Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, FAX: 301-847-8533, e-mail: AIDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a

previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 4, 2011, the committee will discuss clinical trial design issues in the development of antibacterials for the treatment of hospital-acquired bacterial pneumonia, including ventilator-associated bacterial pneumonia, and the draft document entitled "Guidance for Industry: Hospital-Acquired Bacterial Pneumonia and Ventilator-Associated Bacterial Pneumonia: Developing Drugs for Treatment," published November 2010 (see FDA Web site at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm064980.htm>).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 21, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 13, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 14, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Minh Doan at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 20, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011-24601 Filed 9-23-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0002]

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 3, 2011, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/ Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301-589-5200.

Contact Person: Minh Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993-0002, 301-

796-9001, FAX: 301-847-8533, e-mail: AIDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 3, 2011, the committee will discuss clinical trial design issues for the development of antibacterials for the treatment of community-acquired bacterial pneumonia and the draft document entitled "Guidance for Industry: Community-Acquired Bacterial Pneumonia: Developing Drugs for Treatment," published March 2009 (see FDA Web site at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm064980.htm>).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 20, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 12, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to

speaking is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 13, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Minh Doan at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 20, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011-24600 Filed 9-23-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0002]

Allergenic Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Allergenic Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 25, 2011, from 8:30 a.m. to approximately 1:30 p.m.

Location: Hilton Washington DC/ Silver Spring, 8727 Colesville Rd., Silver Spring, MD 20910, 301-589-5200. For those unable to attend in person, the meeting will also be Web cast. The link for the Web cast is available at <http://fda.yorkcast.com/webcast/Viewer/?peid=ca3ce867368c410999cde1d63208e9ef1d>.

Contact Person: Donald W. Jehn or Joanne Lipkind, Center for Biologics Evaluation and Research (HFM-71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-0314, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On October 25, 2011, the committee will meet in open session to hear and discuss CBER's review of scientific and medical literature concerning the use of non-standardized allergen extracts in the diagnosis and treatment of allergic disease. FDA is announcing the availability of this report entitled "CBER's Report of Scientific and Medical Literature and Information on Non-Standardized Allergen Extracts in the Diagnosis and Treatment of Allergic Disease" elsewhere in this issue of the **Federal Register**.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 18, 2011. Oral presentations from the public will

be scheduled between approximately 11:30 a.m. and 12:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 11, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 11, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Joanne Lipkind at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-24597 Filed 9-23-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0599]

Center for Biologics Evaluation and Research Report of Scientific and Medical Literature and Information on Non-Standardized Allergenic Extracts in the Diagnosis and Treatment of Allergic Disease; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of its report of scientific and medical literature and information concerning the use of non-standardized allergenic extracts in the diagnosis and treatment of allergic disease. The report is provided in a data file entitled "Center for Biologics Evaluation and Research Report of Scientific and Medical Literature and Information on Non-Standardized Allergenic Extracts in the Diagnosis and Treatment of Allergic Disease." FDA is making this report available to provide information and obtain comments from public and private stakeholders. FDA will also seek input on the report from the Allergenic Products Advisory Committee (APAC) at a meeting to be held on October 25, 2011. FDA has not made any regulatory decisions concerning the report or the products discussed in the scientific literature and information cited. FDA will review comments and other information it receives, as part of its continued oversight of regulated products.

DATES: Submit either electronic or written comments on the report by November 25, 2011.

ADDRESSES: Submit written requests for single copies of the report to 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 data file 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 data file document.

Submit electronic comments on the report to <http://www.regulations.gov>. Submit written comments on the report to the Division of Dockets Management

(HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-6210.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing the availability of its report of scientific and medical literature and information concerning the use of non-standardized allergenic extracts in the diagnosis and treatment of allergic disease. FDA is making this report available to provide information and obtain comment on the report from public and private stakeholders. FDA will also seek input on the report from APAC at a meeting to be held on October 25, 2011. A separate notice of the APAC meeting is published elsewhere in this issue of the **Federal Register**. This process will assist FDA in its continued oversight of regulated products.

II. Discussion

In 2004, FDA formed an internal committee to review available scientific and medical data on the safety and effectiveness of non-standardized allergenic extracts. FDA formed this committee to consider the previous evaluations performed by the external allergenics advisory review panels under 21 CFR 601.25 (Panel I or "Original Panel") and under 21 CFR 601.26 (Panel II or "Reclassification Panel"). Reports of the Original and Reclassification Panels are available at <http://www.fda.gov/BiologicsBloodVaccines/Allergenics/ucm272115.htm>. The internal committee designed a data file to use in its review and to archive supporting data. The data file includes a report of information for each product, including a discussion of each product reviewed, and a list of reviewed literature associated with each product. FDA's approach to creating this data file was presented to APAC on April 7, 2005, and discussed again at the APAC meeting on September 13, 2006.

After receiving favorable feedback from the APAC on FDA's proposed methodology, FDA proceeded to collect the following information in order to facilitate its assessment of safety and effectiveness of non-standardized allergenic products.

A. Literature Reviewed by the Allergenics Advisory Review Panels

This includes literature reviewed by the Original Panel as part of its final report in 1981 and literature reviewed by the Reclassification Panel as part of its final report in 1983.

B. Data Concerning the Effectiveness and Safety of Non-Standardized Allergenic Products That Have Become Available Since 1972

This includes published literature, available manufacturer data, and data from other external sources. FDA accumulated these data from the following sources:

1. Published Literature From 1972 to the Present

This literature was acquired by searching for articles using a PubMed and/or Institute for Scientific Information (ISI) search engine (English-language literature articles only).

2. Publicly Available Manufacturer Data

These data were obtained by reviewing information published in the literature.

3. Medwatch Data Collected for Years 1987 to 2010

These data were evaluated for safety related product trends.

4. Data From Other External Sources

These data were obtained by performing a broad Internet search (e.g., Google) to check for any additional safety or effectiveness data not captured in published articles found via PubMed or ISI.

FDA collected information from published scientific and medical literature and other data sources for each extract in order to identify those studies that used acceptable alternative testing methods. FDA also collected information from studies that:

- Provided identifiable, specific and valid nomenclature for the source materials used in the preparation of the allergenic extracts in the studies.
- Were performed using aqueous based extracts prepared from specifically identified source materials with correct nomenclature.
- Described identifiable, specific, and valid study methods.
- Provided objective and evaluable data.
- For skin test data in the studies:
 - Obtained positive skin tests in index cases by either skin prick or intradermal methods, demonstrated by:
 - Wheal or erythema;
 - Where appropriate, comparison to positive and negative control data in same study subjects.

• For studies with cross reactivity data, demonstrated cross reactivity by:

- ELISA or RAST inhibition;
- Western immunoblot; or
- Other valid immunochemical data.

In reviewing evidence of efficacy, FDA did not consider to be adequate "random experience," or reports that lacked sufficient scientific detail for proper evaluation (such as imprecise nomenclature). FDA also did not consider to be adequate "isolated case reports" unless corroborated by the following: (1) Other case reports from independent authors, (2) well-described allergen challenge data, or (3) valid cross-reactivity data.

FDA is providing its report of the collected literature and other data in a data file that is currently available in PDF format on FDA's Web site at <http://www.fda.gov/downloads/BiologicsBloodVaccines/Allergenics/UCM271330.pdf>. FDA welcomes comments on the scientific and medical literature and information presented in the data file.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the data file at <http://www.fda.gov/downloads/BiologicsBloodVaccines/Allergenics/UCM271330.pdf> or <http://www.regulations.gov>.

Dated: September 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-24598 Filed 9-23-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0013]

Statement of Organizations, Functions, and Delegations of Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has reorganized the Center for Drug Evaluation and Research (CDER) by establishing two offices and their substructures under the Office of Medical Policy: Office of Prescription Drug Promotion (OPDP) and Office of Medical Policy Initiatives (OMPI). OPDP will consist of the Division of Direct-to-Consumer Promotion and the Division of Professional Promotion. OMP will consist of the Division of Medical Policy Development and Division of Medical Policy Programs.

FOR FURTHER INFORMATION CONTACT: Karen Koenick, Center for Drug Evaluation and Research (HFD-063), Food and Drug Administration, 11919 Rockville Pike, rm. 324, Rockville, MD 20852, 301-796-4422.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The Statement of Organization, Functions, and Delegations of Authority for CDER (35 FR 3685, February 25, 1970; 60 FR 56605, November 9, 1995; 64 FR 36361, July 6, 1999; 72 FR 50112, August 30, 2007; 76 FR 19376, April 7, 2011; and 76 FR 51039, August 17, 2011) is amended to reflect the restructuring of CDER that was approved by the Secretary of Health and Human Services on May 25, 2011, as follows:

II. Organization

CDER is headed by the Director and includes the following organizational units:

Office of Medical Policy

1. Provides Center oversight and leadership in the development of medical policy procedures and policy initiatives pertaining to drug development, drug approval, bioresearch monitoring, human subject protection, and postmarket surveillance.
2. Provides scientific and regulatory leadership in ensuring accurate and effective communication of medical information to health care professionals and patients and compliance with applicable regulations.
3. Fosters an interdisciplinary approach to medical policy development, implementation, and coordination through collaboration with other disciplines, program areas, and FDA Centers in a manner that enhances integration of evolving science and policy into drug development, regulatory review, and postmarket surveillance processes.

Office of Prescription Drug Promotion

1. Formulates and establishes policy for the regulation of prescription drug promotion, including advertisements and promotion labeling, and other promotional activities.
2. Plans and supervises research studies to evaluate the impact of health communication and prescription drug promotion directed to health care professionals and consumers.

Division of Direct-To-Consumer Promotion

1. Reviews draft Direct-to-Consumer Promotion (DTCP) promotional materials and provides detailed written advisory comments to industry sponsors. Examples of draft materials include television ads, magazine ads, Internet Web sites, and patient brochures.
2. Develops and issues enforcement actions against false and misleading DTCP materials and activities for prescription drugs.
3. Reviews draft patient labeling for inappropriate promotional content.

Division of Professional Promotion

1. Reviews draft promotional materials directed to health care professionals and provides detailed written advisory comments to industry sponsors. Examples of draft materials include journal ads, Internet Web sites, commercial exhibit hall materials, sales aids, and broadcast advertisements.
2. Develops and issues enforcement actions against false and misleading prescription drug promotional materials and activities directed to health care professionals.
3. Reviews draft professional labeling for inappropriate promotional content.

Office of Medical Policy Initiatives

1. Provides oversight and direction for development of medical policies and procedures pertaining to drug development and drug approval and postmarket surveillance processes.
2. Provides oversight and direction for new and ongoing policy initiatives in broad-based medical and clinical policy areas, including initiatives to develop active safety monitoring of marketed products, improve the science and efficiency of clinical trials, regulate biosimilars (or follow-on biologics), and enhance consumer-directed drug information.

Division of Medical Policy Development

1. Responsible for the development of medical policy pertaining to drug development, drug approval, bioresearch monitoring, human subject protection, and postmarket surveillance

processes in collaboration with appropriate program areas and coordinating committees. Develops issue papers, guidances, regulations, and operating procedures.

2. Provides advice and assistance to FDA staff and external constituents concerning implementation or application of new and existing medical policies and procedures.

3. Collaborates with the Office of Regulatory Policy to ensure timely and efficient clearance and dissemination of new and revised policy documents.

Division of Medical Policy Programs

1. Implements the Sentinel Initiative, an innovative safety monitoring program for marketed medical products that employs active surveillance of automated health care databases.

2. Coordinates with FDA Centers, external partners, and stakeholders to ensure efficient implementation of quality science and technology, and effective privacy and security strategies.

3. Manages and coordinates policy development related to biosimilars legislation and resulting programs.

4. Manages and coordinates clinical trial modernization policy and programs, including coordinating public-private partnerships dedicated to removing barriers to clinical trials participation, enhancing evidence derived from clinical trials, and optimizing the use of clinical trial resources.

5. Manages and coordinates policy and program initiatives to improve quality and utility, and broaden dissemination, of consumer-directed medical information.

6. Manages and coordinates efforts to ensure that professional labeling is compliant with applicable regulations and is optimized as a tool for communicating about the safety and efficacy of drugs.

7. Coordinates and collaborates with relevant program areas to ensure optimal FDA scientific and technical input for ongoing policy initiatives.

8. Develops and manages new science and technology policy initiatives pertaining to drug development, drug approval, and postmarket surveillance processes.

III. Delegation of Authority

Pending further delegation, directives or orders by the Commissioner of Food and Drugs, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided

they are consistent with this reorganization.

Dated: September 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-24583 Filed 9-23-11; 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: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104-13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail paperwork@hrsa.gov or call the HRSA

Reports Clearance Officer at (301) 443-1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (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.

Proposed Project: Cultural and Linguistic Competency and Health Literacy Data Collection Checklist (OMB No. 0915-xxxx)—[New]

The vision of the Health Resources and Services Administration (HRSA) is "Healthy Communities, Healthy People." In addition, the HRSA mission statement is "To improve health and achieve health equity through access to quality services, a skilled health workforce and innovative programs." This is the framework that supports a health care system that assures access to comprehensive, culturally competent, quality care.

Performance measures have been helpful for HRSA to assess the progress of each grantee. The measure used will be the degree to which HRSA-funded

programs have incorporated cultural and linguistic competence and health literacy elements into their policies, guidelines, contracts and training. HRSA Bureaus/Offices shall be encouraged to incorporate this performance measure or a modified version of this measure into their funding opportunity announcements either as a stand-alone or integrated measure.

Using a scale of 0-3, the grantee may use the Cultural and Linguistic Competency and Health Literacy Data Collection Checklist to assess if specified cultural/linguistic competence and health literacy elements have been incorporated into their policies, guidelines, contracts and training. Each HRSA program may add data sources and year of data used for scoring to provide a rationale for determining a score, and/or applicability of elements to a specific program.

The goal of this checklist is to increase the number of HRSA-funded programs that have integrated both cultural and linguistic competence, as well as health literacy, into their policies, guidelines, contracts and training. In addition, variations of the proposed tool have proven useful for grantees' self-assessment. This proposed tool can also offer insights into technical assistance challenges and opportunities.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Data Collection Checklist	900	1	900	1	900
Total	900	1	900	1	900

E-mail comments to paperwork@hrsa.gov or mail the HRSA Reports Clearance Officer, Room 10-33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 20, 2011.

Reva Harris,

Acting Director, Division of Policy Information and Coordination.

[FR Doc. 2011-24561 Filed 9-23-11; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage

for companies and may also be available for licensing.

ADDRESSES: 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.

A Novel Method To Predict Kidney Tumor Growth

Description of Technology: The invention pertains to a computerized method of predicting kidney tumor growth for early stage treatment planning. The method utilizes a finite

element method (FEM)-based 3D tumor growth prediction system using longitudinal kidney tumor images. The kidney tissues are classified into three types: Renal cortex, renal medulla and renal pelvis. The reaction-diffusion model is applied as the tumor growth model. Different diffusion properties are considered in the model: Anisotropic for renal medulla and isotropic for renal cortex and renal pelvis. The FEM is employed to solve the diffusion model. The model parameters are estimated by optimizing of an objective function. Ultimately, longitudinal data is used to fit the tumor growth model. The technique was tested on two longitudinal studies with seven time points on five tumors. The experimental results (average of 91.4% true positive volume fraction and 4.0% of false positive volume fraction) showed the feasibility and efficacy of the technique.

Potential Commercial Applications: The technique can be used to predict kidney tumor growth pattern using CT data. It can be effectively used in planning therapeutic regimen in early stage kidney tumors.

Competitive Advantages: The technique is the first kidney tumor growth prediction system. It can be implemented in the oncology package that most major imaging companies have in their commercial workstation.

Development Stage:

- Prototype.
- In vivo data available (human).

Inventors: Ronald M. Summers et al. (NIHCC).

Publication: Chen X, et al. FEM-Based 3-D Tumor Growth Prediction for Kidney Tumor. *IEEE Trans Biomed Eng.* 2011 March;58(3):463-467; doi 10.1109/TBME.2010.2089522.

Intellectual Property: HHS Reference E-250-2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Michael Shmilovich, Esq.; 301-435-5019; shmilovm@mail.nih.gov.

Pharmaceutical Compounds for the Treatment of Spinal Muscular Atrophy and Other Uses

Description of Technology: The SMA Project (<http://www.smaproject.org/programs.html>) was established by NINDS to identify new compounds with improved effectiveness, safety, and pharmacokinetic characteristics aimed at finding a new therapeutic treatment for Spinal Muscular Atrophy (SMA), a paralyzing and often fatal disease of infants and children. The result of the SMA Project medicinal chemistry optimization effort is a library of ~1400 indoprofen analogues with drug like

properties. A lead pre-clinical candidate for SMA has been identified based on several factors, including its ability to increase SMN expression.

The mechanism by which these compounds affect ribosomal fidelity proves to be useful for many genetic CNS diseases. The ability of these compounds to read through nonsense stop codons, coupled with the ability to cross the blood-brain barrier and drug like properties, makes these compounds attractive as therapeutics for diseases such as Muscular Dystrophy and Cystic Fibrosis. Preliminary results in HIV and HPV assays show that these compounds potentially inhibit viral replication, presumably via inducing ribosomal frame shift, suggesting potential for antiviral therapy. In addition, these compounds have been shown to be non-toxic and well-tolerated at high doses in rodents.

Potential Commercial Applications: Broad applications based on mechanism of action—

- Read through = many genetic CNS diseases.

—Spinal Muscular Atrophy (SMA).
—Muscular Dystrophy, Rett Syndrome, Diabetes Cancer, Niemann Pick disease, Cystic Fibrosis.

- Frame shift = broad anti-viral.
- Efficacy similar to AZT in HIV replication assay.
- Effective suppression of HPV replication.

—Brain penetrant compounds → neuronal viruses.

Competitive Advantages:

- No treatments available for SMA.
- First-in-class anti-viral with host-directed mechanism of action.

• Optimized activity and pharmaceutical properties:
—nM potency and efficacy in SMN expression assays.

- Good brain penetrance.
- Metabolic stability in multiple species.
- Demonstrated favorable ADMET characteristics.
- Demonstrated safety in 7-day rat tox studies.
- High yield synthesis process.

Development Stage:

- Early-stage.
- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

Inventors: Jill E. Heemskerk (NINDS), et al.

Intellectual Property: HHS Reference No. E-050-2011/0—U.S. Patent Application No. 61/475,541 filed 14 April 2011.

Related Technologies:

- HHS Reference No. E-133-2006/1—U.S. Patent Application No. 12/293,268 and foreign patent applications.

- HHS Reference No. E-187-2007/0—U.S. Patent Application No. 12/680,285 and foreign patent applications.

Licensing Contact: Charlene A. Sydnor, Ph.D.; 301-435-4689; sydnorc@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Neurological Disorders and Stroke is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize treatment for SMA. For collaboration opportunities, please contact Melissa Maderia at maderiam@mail.nih.gov.

STAMP, A Novel Cofactor and Possible Steroid Sparing Agent, Modulates Steroid-induced Induction or Repression of Steroid Receptors

Description of Technology: Steroid hormones such as androgens, glucocorticoids, and estrogens are used in the treatments of many diseases. They act to regulate many physiological responses by binding to steroid receptors. However, because steroid receptors are expressed in many tissues, efforts to therapeutically modify the effects of steroid hormones on a specific tissue or on a specific receptor of the steroid receptor family often cause undesirable effects in other tissues or on other receptors. STAMP (SRC-1 and TIF-2 Associated Modulatory Protein), a novel protein that acts to lower the concentration of steroid hormone needed to induce (or repress) selected target genes by regulating steroid receptor synthesis, offers a novel approach for reducing the severity of unwanted side-effects, thereby increasing the ability to use steroid hormone therapies.

Potential Commercial Applications:

- Diseases requiring chronic steroid treatment such as rheumatoid arthritis, psoriatic arthritis, asthma, inflammatory and auto-immune diseases.

- Diseases characterized by excess or deficiency of glucocorticoids such as obesity, diabetes, hypertension, Cushing's Syndrome, Parkinson's Disease, Addison's Disease.

- Diseases in which glucocorticoid-responsive gene expression is deranged, so deranging carbohydrate, protein or lipid metabolism.

- Cancers responsive to androgen or estrogen, such as breast cancer or prostate cancer.

- Therapeutic applications related to male or female hormone replacement, symptoms related to menopause, birth control, menstrual cycle/amenorrhea, fertility or endometriosis.

Competitive Advantages:

- STAMP reduces the severity of unwanted side-effects of steroid hormone therapies.
- STAMP modulates the gene induction properties of androgen and progesterone receptors.
- STAMP modulates both induction and repression properties of glucocorticoid receptors.
- STAMP is inactive toward alpha and beta estrogen receptors, thyroid receptor beta, PPAR gamma 2, retinoid receptor alpha or RXR alpha.
- The siRNAs could be useful as therapeutics.

Development Stage: Early-stage.

Inventors: S. Stoney Simons Jr. and Yuanzheng He (NIDDK)

Publication: He Y, Simons SS Jr. STAMP, a novel predicted factor assisting TIF2 actions in glucocorticoid receptor-mediated induction and repression. *Mol Cell Biol.* 2007 Feb;27(4):1467–1485. [PMID 17116691].

Intellectual Property: HHS Reference No. E-056-2004/0—U.S. Patent No. 7,867,500 issued 11 Jan 2011.

Related Technology: HHS Reference No. E-226-2009/0—PCT Application No. PCT/US10/037452 filed 04 Jun 2010, which published as WO 2010/144324 on 16 Dec 2010.

Licensing Contact: Tara L. Kirby, Ph.D.; 301-435-4426; tarak@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases, Steroid Hormones Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize STAMP, a steroid cofactor. Please contact Dr. S. Stoney Simons at steroids@helix.nih.gov for more information.

A Biomarker and Therapeutic Target for Ovarian Cancer

Description of Technology: This technology provides methods of diagnosing or treating certain ovarian cancers using STAMP, a steroid cofactor. There are currently no effective methods for early-stage diagnosis of ovarian cancer. Diagnosis is usually made through a combination of physical examination, ultrasound imaging, and a blood test for the tumor marker CA-125. The CA-125 test only returns a true positive result for about 50% of early-stage ovarian cancers, and may be elevated in other conditions not related to cancer, so it is not an adequate early detection tool when used alone.

The inventors have shown that STAMP mRNA levels are elevated in ovarian cancer samples, including early-stage cancers. They have also found that

in a subset of ovarian cancer cell lines, introduction of STAMP siRNAs slows cell proliferation. These findings suggest that STAMP may be useful as a biomarker to detect early stage cancer in ovarian tissues, and is also promising as a therapeutic target for a subset of ovarian cancers.

Applications:

- Development of an early-stage diagnostic test for ovarian cancer.
- Development of a siRNA-based therapy for ovarian cancer.

Development Stage:

- Early-stage.
- In vitro data available.

Inventors: S. Stoney Simons and Yuanzheng He (NIDDK).

Publication: He Y, et al. STAMP alters the growth of transformed and ovarian cancer cells. *BMC Cancer.* 2010 Apr 7;10:128. [PMID 20374646].

Intellectual Property: HHS Reference No. E-226-2009/0—PCT Application No. PCT/US10/037452 filed 04 Jun 2010, which published as WO 2010/144324 on 16 Dec 2010.

Related Technology: HHS Reference No. E-056-2004/0—U.S. Patent No. 7,867,500 issued 11 Jan 2011.

Licensing Contact: Tara Kirby, Ph.D.; 301-435-4426; tarak@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases, Steroid Hormones Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize STAMP, a steroid cofactor. Please contact Dr. S. Stoney Simons at steroids@helix.nih.gov for more information.

Small Molecule Modulators of Adrenomedullin and Gastrin Releasing Peptide for the Treatment of Cancer and Other Angiogenesis-Mediated Disorders

Description of Technology: Adrenomedullin (AM) and Gastrin Releasing Peptide (GRP) are peptide hormones that are expressed in a wide range of tissues and have a variety of biological roles, including angiogenesis, cardiovascular disease, renal function, cell growth, glucose metabolism, and regulation of hormone secretion.

The inventors have identified a panel of small molecule, non-peptide, pharmaceutically active compounds that modulate AM or GRP activity at nanomolar concentrations. Certain antagonists in the panel were demonstrated to inhibit angiogenesis and inhibit cell proliferation *in vitro*, and to reduce tumor size in an *in vivo* rodent model. These modulatory compounds may be useful in the

treatment of a number of diseases related to aberrant angiogenesis, particularly cancer.

This technology describes methods of inhibiting aberrant activity of AM or GRP using a compound identified by the inventors, as well as methods of treating a condition by such inhibition, such as cancer, hypotension, and other disorders. Also described are pharmaceutical compositions, kits, and methods for detecting an AM or GRP peptide using the compounds.

Potential Commercial Applications: Treatment of angiogenesis-mediated diseases such as cancer, cardiovascular disease, and macular degeneration.

Competitive Advantages:

- Compounds effective at nanomolar concentrations.
- Extensive *in vitro* and *in vivo* data available for several compounds.

Development Stage:

- Early-stage.
- In vitro data available.
- In vivo data available (animal).

Inventors: Frank F. Cuttitta and Alfredo Martinez (NCI).

Publications:

1. Martinez A, et al. Identification of vasoactive nonpeptidic positive and negative modulators of adrenomedullin using a neutralizing antibody-based screening strategy. *Endocrinology.* 2004 Aug;145(8):3858–3865. [PMID 15107357].

2. Martinez A, et al. Gastrin-releasing peptide (GRP) induces angiogenesis and the specific GRP blocker 77427 inhibits tumor growth *in vitro* and *in vivo*. *Oncogene.* 2005 Jun 9;24(25):4106–4113. [PMID 15750618].

3. Martínez-Murillo R, et al. Standardization of an orthotopic mouse brain tumor model following transplantation of CT-2A astrocytoma cells. *Histol Histopathol.* 2007 Dec;22(12):1309–1326. [PMID 17701911].

4. Fang C, et al. Non-peptide small molecule regulators of lymphangiogenesis. *Lymphat Res Biol.* 2009 Dec;7(4):189–196. [PMID 20143917].

Intellectual Property:

- HHS Reference No. E-246-2003/1—U.S. Application No. 10/571,012 filed 08 Mar 2006*

- Foreign counterparts in Australia, Canada, and Europe.

Related Technologies:

- HHS Reference No. E-206-1995/3.
- HHS Reference No. E-256-1999/0.
- HHS Reference No. E-293-2002/0.
- HHS Reference No. E-294-2002/0.
- HHS Reference No. E-263-2009/0.

Licensing Contact: Tara Kirby, Ph.D.; 301-435-4426; tarak@mail.nih.gov.

Dated: September 20, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, Notional Institutes of Health.

[FR Doc. 2011-24626 Filed 9-23-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 Cancer Institute Initial Review Group, Subcommittee J—Population and Patient-Oriented Training.
Date: October 27, 2011.

Time: 7:45 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Ilda M. McKenna, PhD, Scientific Review Officer, Research Training Review Branch, Division Of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892, 301-496-7481, mckennai@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://deoinfo.nci.nih.gov/odvisory/irg/irg.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-24646 Filed 9-23-11; 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, Hypertension and Microcirculation A.

Date: October 14, 2011.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435-1210, choudhaa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Gastrointestinal Pathophysiology.

Date: October 20, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301-435-1169, greenwep@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: September 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-24648 Filed 9-23-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel, Institutional Research Training Grant.

Date: October 19, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Weiqun Li, MD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594-5966, wli@mail.nih.gov.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Fellowship and Career Award Grant Review with Conflict.

Date: October 21, 2011.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Weiqun Li, MD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594-5966, wli@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-24651 Filed 9-23-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 a meeting of the Board of Scientific Counselors, National Advisory Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: October 16-18, 2011.

Time: 7 p.m. to 11:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, PhD, Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room 6A908, Bethesda, MD 20892, (301) 435-2232, koretskya@ninds.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: September 19, 2011

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-24647 Filed 9-23-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, I/ START Review Committee.

Date: October 14, 2011.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Mark Swieter, PhD, Chief, Extramural Activities Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4235, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892-9550, 301-435-1389, ms80x@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, B/ START Review Committee.

Date: October 14, 2011.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Mark Swieter, PhD, Chief, Extramural Activities Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4235, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892-9550, 301-435-1389, ms80x@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Institutional Research Training Grants (T32).

Date: November 3, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4245, MSC

9550, 6001 Executive Blvd., Bethesda, MD 20892-9550, 301-451-4530, el6r@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA-K Conflict.

Date: November 3, 2011.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Gerald L. McLaughlin, PhD, Chief, Grants Review Branch and Contracts Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4238, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892-9550, 301-402-6626, gm145a@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Exploring Drugs of Abuse and Transgenerational Phenotypes (R01).

Date: November 17, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Washington, DC City Center, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Minna Liang, PhD, Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4226, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892-9550, 301-435-1432, liangm@nida.nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA Cutting-Edge Basic Research Awards (CEBRA) (R21).

Date: December 2, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Scott A. Chen, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4234, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892-9550, 301-443-9511, chensc@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 20, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-24660 Filed 9-23-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Multisites Applications (R01) Review.

Date: October 5, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Scott A. Chen, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4234, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892-9550, 301-443-9511, chensc@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 20, 2011.

Jennifer S. Spaeth,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-24662 Filed 9-23-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Council.

Date: October 25, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: Provide advice to the Acting Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

Place: Health and Human Services Building, 5635 Fishers Lane, T-500, Rockville, MD 20852.

Contact Person: Cheryl A. Kitt, PhD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, 301-435-1112, kittc@csr.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(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: September 20, 2011.

Jennifer S. Spaeth,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-24628 Filed 9-23-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Registration is required since space is limited and will begin at 8 a.m. Please visit the conference Web site for information on meeting logistics and to register for the meeting, <http://www.cvent.com/d/9cq73p>. Individuals who plan to attend and need special

assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee.

Date: October 19, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: The Committee will receive an update on current NCS formative research with highlights and data presentations featured at the August 24, 2011 NCS Research Day meeting held in Bethesda, MD.

Place: National Institutes of Health, Fishers Lane Conference Center, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Kate Winseck, MSW, Executive Secretary, National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5C01, Bethesda, MD 20892, (703) 902-1339, ncs@circlesolutions.com.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. For additional information about the Federal Advisory Committee meeting, please contact Circle Solutions at ncs@circlesolutions.com.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 20, 2011.

Jennifer S. Spaeth,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-24627 Filed 9-23-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2011-0905]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Towing Safety Advisory Committee (TSAC) will hold a public meeting on Thursday, October 20, 2011, in Newport News, Virginia. Two TSAC sub-committees will meet the day before, October 19, 2011.

DATES: Two Towing Safety Advisory Committee Sub-committees will conduct a meeting, open to the public,

on Wednesday, October 19, 2011, from 8 a.m. to 5 p.m. The Towing Safety Advisory Committee (TSAC) will conduct a public meeting Thursday, October 20, 2011, from 8:30 a.m. to 4 p.m.; both meetings will be held in Newport News, Virginia. Please note that either meeting may close early if the committee has completed its business. Written comments must be submitted no later than October 7, 2011. **ADDRESSES:** The meetings will be held at The Point Plaza Suites, 950 J. Clyde Morris Blvd., Newport News, VA 23601. Hotel Web site: <http://www.pointplazasuites.com/>.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee. Written comments must be identified by Docket No. USCG-2011-0905 and submitted by one of the following methods:

- **Federal Rulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** 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. We encourage use of electronic submissions because security screening may delay the delivery of mail.
- **Fax:** 202-493-2251.
- **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 methods. For instructions on submitting comments, see the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Harmon, Alternate Designated Federal Officer (ADFO), TSAC; U.S. Coast Guard Headquarters, CG-5222, Vessel and Facilities Operating Standards Division; telephone (202) 372-1427, fax (202) 372-1926, or e-mail at: Michael.J.Harmon@USCG.MIL.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act*, 5 U.S.C. App. (Pub. L. 92-463) as amended (FACA). This Committee is established in accordance with and operates under the provisions of the FACA. It was established under the authority of 33 U.S.C. 1231a and advises, consults with, and makes recommendations to the Secretary of the Department of Homeland Security (DHS) on matters

relating to shallow-draft inland and coastal waterway navigation and towing safety. TSAC may complete specific assignments such as studies, inquiries, workshops, and fact finding in consultation with individuals and groups in the private sector and/or with state and local government jurisdictions in compliance with FACA.

Agenda—October 19, 2011 TSAC Sub-Committee Meetings

The agenda for the October 19, 2011 TSAC sub-committee meeting (open to the public) is as follows:

- (1) TSAC Subcommittee work-group on Task Statement 08-01, the development of recommendations for the revision of NVIC 04-01 "Licensing and Manning for Officers of Towing Vessels."
- (2) Sub-committee review of the Notice of Proposed Rulemaking (NPRM) for Inspection of Towing Vessels with particular emphasis on the incorporation of TSAC recommendations submitted under Task Statement 04-03.

Agenda—October 20, 2011 Public Meeting

The agenda for the October 20, 2011 TSAC public meeting is as follows:

- (1) Report on National Maritime Center (NMC) activities from NMC Commanding Officer.
- (2) Report from CG-5431, Office of Vessel Activities, and the Towing Vessel National Center of Expertise.
- (3) Subcommittee report on Task Statement 08-01, the review and recommendations for the revision of NVIC 04-01 "Licensing and Manning for Officers of Towing Vessels."
- (4) Subcommittee report on the Notice of Proposed Rulemaking for Inspection of Towing Vessels and TSAC involvement through Task Statement 04-03.
- (5) Public comment period.

Public Participation

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee. Please note that regarding—

- Agenda Item 3, a copy of NVIC 04-01 is available in the docket.
- Agenda Item 4, on August 11, 2011, the Coast Guard published a notice of proposed rulemaking entitled "Inspection of Towing Vessels" (76 FR 49976; <http://www.gpo.gov/fdsys/pkg/FR-2011-08-11/pdf/2011-18989.pdf>).

Written comments related to this TSAC meeting must be identified by Docket No. USCG-2011-0905 and submitted by one of the methods specified in **ADDRESSES**. Written

comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. Anyone can search the electronic form of comments received into the docket 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). For access to the docket to read background documents or comments received in response to this notice, go to <http://www.regulations.gov>, insert USCG-2011-0905 in the Keyword ID box, press Enter, and then click on the item you are interested in viewing.

An opportunity for public oral comment will be provided during the TSAC public meeting on October 20, 2011, as the final agenda item. Speakers are requested to limit their comments to 5 minutes. Please note that the public oral comment period may end before 5 p.m. if all of those wishing to comment have done so.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Mr. Michael J. Harmon at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Minutes

Minutes from the meeting will be available for the public to review within 30 days following the close of the meeting and can be accessed from the Coast Guard Homeport Web site <http://homeport.uscg.mil>.

Dated: September 19, 2011.

J.G. Lantz,
Director of Commercial Regulations and Standards.

[FR Doc. 2011-24580 Filed 9-23-11; 8:45 am]
BILLING CODE 9910-04-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Office of the Secretary, DHS.
ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Department of Homeland Security. The purpose of the

Performance Review Board is to view and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service, Senior Level and Senior Professional positions of the Department.

DATES: *Effective Dates:* This Notice is effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haefeli, Office of the Chief Human Capital Officer, telephone (202) 357-8164.

SUPPLEMENTARY INFORMATION: Each Federal agency is required to establish one or more performance review boards (PRB) to make recommendations, as necessary, in regard to the performance of senior executives within the agency. 5 U.S.C. 4314(c). This notice announces the appointment of the members of the PRB for the Department of Homeland Security (DHS). The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions within DHS.

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

Aguilar, David V.
 Alexander, Barbara
 Alvarez, Luis
 Anderson, Audrey
 Anderson, Gary
 Anderson, Penny
 Andrews, John
 Armstrong, Charles R.
 Armstrong, Sue
 Athmann, Ronald
 Ayala, Janice
 Barber, Delores
 Baroukh, Nader
 Bartoldus, Charles
 Bathurst, Donald
 Bauhs, Kim
 Beagles, James
 Beckham, Steward
 Bednarz, Jacquelyn
 Beers, Rand
 Benda, Paul
 Bernstein, Jarrod
 Bester-Markowitz, Margot
 Borkowski, Mark S.
 Borrás, Rafael
 Boyce, Donald
 Bray, Robert S.
 Brooks, Vicki
 Brown, Dallas
 Brown, Meddie

Brundage, William
 Brunjes, David
 Bucella, Donna A.
 Bucher, Steven P.
 Buckingham, Patricia
 Burke, Richard
 Butcher, Michael
 Button, Christopher
 Byrne, Michael
 Byrne, Sean J.
 Cahill, Donna L.
 Callahan, Mary Ellen
 Canton, Lynn
 Carpenter, Dea D.
 Carson, Rebecca S.
 Carwile, William
 Castro, Raul
 Caverly, Robert
 Chaparro, James
 Chavez, Richard
 Chuang, Theodore
 Clark, Sheila
 Clever, Daniel
 Cline, Richard
 Coffman, Katherine M.
 Cogswell, Patricia
 Cohen, John
 Cohn, Alan
 Colburn, C. Brent
 Coleman, Corey
 Conklin, William
 Connor, Edward
 Contreras, January
 Cooper, Bradford
 Coose, Matthew
 Cornelius F. Tate
 Correa, Soraya
 Cummiskey, Chris
 Daitch, William
 Danelo, Daniel J.
 Davis, Delia
 Davis, Robert
 de Vallance, Brian
 Dean, Nicole
 DeVita, Charles
 DiFalco, Frank
 Dinkins, James
 Dong, Norman
 Duffy, Patricia M.
 Dunlap, James L.
 Durette, Paul
 Durkovich, Caitlin
 Edwards, Eric
 Elias, Richard K.
 Emerson, Catherine
 Essid, Michael
 Etzel, Jean
 Fagerholm, Eric N.
 Falk, Scott K.
 Farley, Evan
 Fenton, Robert
 Fisher, Michael J.
 Flinn, Shawn O.
 Flynn, William
 Fonash, Peter
 Fox, Kathleen
 Freeman, Beth
 Fudge Finegan, Robin
 Fugate, Craig

Gabrielli, Tina
 Gaines, Glenn
 Gantt, Kenneth
 Garratt, David
 Garwood, Thomas
 Garza, Alexander
 Gersten, David
 Gina, Allen
 Gnerlich, Jan
 Goode, Brendan
 Gowadia, Huban
 Grade, Deborah C.
 Gramlick, Carl
 Graves, Margaret
 Griffin, Robert P., Ph.D
 Grimm, Michael
 Gross-Davis, Leslie
 Grossman, Seth
 Gruber, Corey
 Guilliams, Nancy W.
 Halinski, John W.
 Hardiman, Tara
 Harman, Elizabeth
 Havranek, John
 Hewitt, Ronald RADM
 Heyman, David
 Hill, Alice
 Hill, Keith O.
 Hill, Mark
 Hochman, Kathleen T.
 Holtermann, Keith
 Hooks, Robert
 Ingram, Deborah
 Jensen, Robert
 Johnson, Bart
 Jones, Berl
 Jones, Christopher
 Jones, Franklin C.
 Jones, Keith
 Jones, Rendell L.
 Kair, Lee R.
 Karoly, Stephen
 Kaufman, David
 Keene, Kenneth D.
 Keil, Todd
 Kendall, Sarah
 Kenney, Fred RADML
 Kerner, Francine
 Kessler, Tamara
 Kibble, Kumar C.
 Kieserman, Brad J.
 Kish, James
 Knight, Sandra
 Kopel, Richard
 Kostelnik, Michael C.
 Koumans, Marnix
 Krizay, Glenn
 Krolloff, Noah
 Kronish, Matthew
 Kropf, John
 Kruger, Mary
 Kruger, Randy
 Kubiak, Lev J.
 Langlois, Joseph E.
 Lederer, Calvin M.
 Lew, Kimberly
 Luczko, George P.
 Ludtke, Meghan G.
 Lute, Jane Holl

Lyon, Shonnie
 Madon, James
 Maher, Joseph B.
 Manning, Timothy
 Markey, Elizabeth
 Marshall, Gregory
 Martin, Timothy
 Martoccia, Anthony
 May, Daniel RADM
 May, Major
 McConnell, Bruce
 McCormack, Luke
 McDermond, James E.
 McGruder, Richard
 McGurk, Sean Paul
 McNamara, Jason
 McNamara, Philip
 Menna, Jenny
 Merritt, Marianna L.
 Merritt, Michael
 Meyer, John
 Micone, Vincent
 Mintz, Terry
 Mitchell, Andrew
 Mocny, Robert
 Monette, Theodore
 Monica, Donald J.
 Montgomery, Cynthia
 Morrissey, Paul S.
 Moses, Patrick
 Moynihan, Timothy
 Muenchau, Ernest
 Murphy, Kenneth
 Myers, David
 Napolitano, Janet
 Nayak, Nick
 Nelson, Mickey M.
 Neufeld, Donald W.
 Novak, Michael
 Olavarria, Esther
 Oliver, Clifford
 Onieal, Denis
 Oritz, Raul
 Palmer, David J.
 Parent, Wayne
 Patrick, Connie L.
 Patterson, Leonard
 Peacock, Nelson
 Penn, Damon
 Philbin, Patrick
 Phillips, Sally
 Pierson, Julia A.
 Potts, Michael
 Pressman, David
 Prewitt, Keith L.
 Quijas, Louis
 Ragsdale, Daniel
 Ramanathan, Sue
 Randolph, William
 Ratliff, Gerri L.
 Rhew, Perry J.
 Robles, Alfonso
 Roche, William
 Rogers, Debra
 Rossides, Gale D.
 Russell, Anthony
 Rynes, Joel
 Salazar, Ronald
 Sampson, Timothy

Sandweg, John
 Saunders, Steve
 Savastana, Anthony J.
 Schaffer, Gregory
 Schied, Eugene H.
 Schlanger, Margo
 Schreiber, Tonya
 Scialabba, Lori L.
 Seale, Mary
 Sekar, Radha
 Serino, Richard
 Sevier, Adrian
 Shlossman, Amy
 Silver, Mariko
 Singleton, Kathy
 Sligh Jr., Albert B.
 Smislova, Melissa
 Smith, A.T.
 Smith, Douglas
 Smith, William
 Stallworth, Charles E.
 Stanley, Kathleen M.
 Stempfley, Roberta
 Stern, Warren
 Stewart, Sharon
 Stinnett, Melanjie S.
 Strack, Barbara L.
 Stroud, Dennie Michael
 Sullivan, Mark
 Swain, Donald
 Teets, Gregory
 Thomas, Burt
 Tierney, MaryAnn
 Tomsheck, James F.
 Torrence, Donald
 Triner, Donald
 Trissell, David
 Ulianko, John
 Velasquez, Andrew
 Velerde, Barbara Q.
 Venture, Veronica
 Veysey, Anne
 Vincent, Peter S.
 Wagner, Caryn
 Walke, James
 Walton, Kimberly H.
 Ward, Nancy
 Ward, Patrice
 Warrick, Thomas
 Whalen, Mary Kate
 Williams, Gerard
 Williams, Grayling
 Williams, Richard N.
 Winkowski, Thomas S.
 Woodard, Steven
 Wright, Joseph W.
 Wulf, David
 Yeager, Michael J.
 Zimmerman, Elizabeth

This notice does not constitute a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget. Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Dated: September 16, 2011.

Shonna R. James,

Director, Executive Resources, Office of the Chief Human Capital Officer.

[FR Doc. 2011-24577 Filed 9-23-11; 8:45 am]

BILLING CODE 9110-98-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Wildland Fire Executive Council Meeting Schedule

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meetings.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., 2, the U.S. Department of the Interior, Office of the Secretary, Wildland Fire Executive Council (WFEC) will meet as indicated below.

DATES: There will be two WFEC meetings in October. The first meeting will be October 11 through October 13. This meeting will begin at 8 a.m. on October 11 and end at 5 p.m. on October 13. The second meeting will be on October 28 and will begin at 10 a.m. and end at 12 noon.

ADDRESSES: The October 11 through 13 meeting will be held in the Interior Operations Center, 3500 Corridor, Main Interior Building, 1849 C Street, Washington, DC 20240. The October 28 meeting will be held from 10 a.m. to 12 noon Eastern Time in the McArdle Room (First Floor Conference Room) in the Yates Federal Building, USDA Forest Service Headquarters, 1400 Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Roy Johnson, Designated Federal Officer, 300 E Mallard Drive, Suite 170, Boise, Idaho 83706; telephone (208) 334-1550; fax (208) 334-1549; or e-mail Roy.Johnson@ios.doi.gov.

SUPPLEMENTARY INFORMATION: The WFEC is established as a discretionary advisory committee under the authorities of the Secretary of the Interior and Secretary of Agriculture, in furtherance of 43 U.S.C. 1457 and provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the National Wildlife Refuge System improvement Act of 1997 (16 U.S.C. 668dd-668ee), and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C.

App. 2. The Secretary of the Interior and Secretary of Agriculture certify that the formation of the WFEC is necessary and is in the public interest.

The purpose of the WFEC is to provide advice on coordinated national-level wildland fire policy and to provide leadership, direction, and program oversight in support of the Wildland Fire Leadership Council. Questions related to the WFEC should be directed to Roy Johnson (Designated Federal Officer) at Roy.Johnson@ios.doi.gov or (208) 334-1550 or 300 E. Mallard Drive, Suite 170, Boise, Idaho, 83706-6648.

Meeting Agenda: The meeting agenda for October 11 through October 13 is summarized below. Please note that the final agenda may be altered. The most current agenda can be obtained at <http://www.forestsandrangelands.gov/strategy/wfec>.

October 11: 8 a.m.—Introductions and Meeting Protocols; 9 a.m.—Western Regional Strategy Committee Presentation; 10 a.m.—Northeast Regional Strategy Committee Presentation; 1 p.m.—Southeast Regional Strategy Committee Presentation; 2 p.m.—Cohesive Strategy Committee Presentation; 3:30 p.m.—National Science and Analysis Team Presentation; 4:30 p.m.—Public Comments; 5:30 p.m.—Adjourn. October 12: 8 a.m.—WFEC Deliberation on Phase 2 reports; 4 p.m.—Public Comment; 5 p.m.—Adjourn. October 13: 8 a.m.—Summarize recommendations and develop agenda for WFLC meeting; 10 a.m.—Communication Strategy Presentation; 11 a.m.—Develop key messages and recommendations; 1 p.m.—Phase 3 Discussion; 3 p.m.—Public Comments; 4 p.m.—Meeting Closeout; 5 p.m.—Adjourn.

The October 28 meeting agenda will include: (1) Welcome and introduction of Council members; (2) Overview of prior meeting and action tracking; (3) Members' round robin to share information and identify key issues to be addressed; (4) Wildland Fire Management Cohesive Strategy; (5) Wildland Fire Issues; (6) Council Members' review and discussion of subcommittee activities; (7) Future Council activities; (8) Public comments at approximately 11:30 a.m.; (9) and closing remarks.

Public Input: All WFEC meetings are open to the public. Members of the public who wish to participate must notify Shari Shetler at Shari_Shetler@ios.doi.gov no later than one week preceding the meeting. Those who are not committee members and wish to present oral statements or obtain information should contact Shari Shetler via e-mail no later than one

week preceding the meeting. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Questions about the agenda or written comments may be e-mailed or submitted by U.S. Mail to: Department of the Interior, Office of the Secretary, Office of Wildland Fire, Attention: Shari Shetler, 300 E. Mallard Drive, Suite 170, Boise, Idaho 83706-6648. WFEC requests that written comments be received a minimum of one week preceding the scheduled meeting. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Shetler at (202) 527-0133 at least seven calendar days prior to the meeting.

Dated: September 21, 2011.

Roy Johnson,

Designated Federal Officer.

[FR Doc. 2011-24618 Filed 9-23-11; 8:45 am]

BILLING CODE 4310-J4-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-MB-2011-N193; 91200-1231-WEBB-M3]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; National Mourning Dove Hunter Attitude Survey on Nontoxic Shot

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. We 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.

DATES: You must submit comments on or before October 26, 2011.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042-PDM, 4401

North Fairfax Drive, Arlington, VA 22203 (mail), or INFOCOL@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at INFOCOL@fws.gov (e-mail) or 703-358-2482 (telephone). You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-NEW.

Title: National Mourning Dove Hunter Attitude Survey on Nontoxic Shot.

Service Form Number: 3-2386.

Type of Request: New.

Description of Respondents: Mourning dove hunters.

Respondent's Obligation: Voluntary.

Frequency of Collection: One-time.

Estimated Number of Annual Respondents: 23,470.

Estimated Number of Annual Responses: 23,470.

Estimated Completion Time per Response: 8.5 minutes.

Estimated Total Annual Burden Hours: 3,325.

Abstract: The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits the unauthorized take of migratory birds and authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations in 50 CFR part 20. On January 1, 1991, we banned lead shot for hunting waterfowl and coots in the United States. Wildlife managers and policymakers at all levels are becoming increasingly concerned about the exposure of mourning doves to spent lead shot.

The mourning dove is the most hunted migratory game bird species. We are asking OMB for approval to sponsor a National Mourning Dove Hunter Attitude Survey on Nontoxic Shot. The Association of Fish and Wildlife Agencies and all four Flyway Councils are collaborating on this survey. Information from this survey will help us make nontoxic shot policy decisions and develop appropriate informational and educational programs if new regulations are necessary.

Under the Migratory Bird Harvest Information Program (50 CFR 20.20), each State annually provides a list of all migratory bird hunters licensed by the State (OMB Control Number 1018-0023). We will use these lists to randomly select mourning dove hunters to participate in the proposed survey. We plan to collect:

- Demographic information (e.g., age, gender, income, education, and occupation).

- Information on hunting experiences (e.g., hunter type, distance traveled to hunt, type of ammunition, frequency of hunting, and positive and negative aspects).

- Perceived problems with nontoxic shot.

- Indirect influences with nontoxic shot.

Comments: On August 18, 2009, we published in the **Federal Register** (74 FR 41739) a notice soliciting public comment on this information collection for 60 days. The comment period ended on October 19, 2009. We received the following comments:

One comment protested the entire migratory bird hunting regulations process, surveys and monitoring programs, and the killing of all migratory birds. *Response:* Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and limit harvest to levels compatible with each population's ability to maintain healthy, viable numbers. Our surveys are integral parts of the Service's monitoring programs that provide the information we need to ensure harvest levels are commensurate with current status of migratory game bird populations and long-term population goals.

Five comments stated that there was no biological basis or scientific evidence to warrant any type of nontoxic shot regulations on mourning doves.

Response: This proposed information collection request does not presume anything one way or another about the quality or quantity of the scientific evidence for or against the use of lead shot for dove hunting. We simply express concern about the issue and recognize hunters are an important constituency. The whole purpose of this information collection is to better understand the hunting constituency.

One comment requested that we be objective in any future decision regarding the implementation of any nontoxic shot regulations. *Response:* We have a long history of making informed decisions based on the best available science to ensure protection of migratory birds for future generations. If any future decisions regarding the implementation of nontoxic shot regulations for migratory birds are deemed necessary, they will be objective, based on the best available science, and follow all guidelines under the National Environmental Protection Act.

Two comments requested that we consider banning the use of lead shot for mourning doves and other wildlife species. *Response:* Again, we do not presume anything one way or another about the quality or quantity of the scientific evidence for or against the use of lead shot for dove hunting. Furthermore, we are not assuming that future nontoxic regulations will be necessary or inevitable.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

- The accuracy of our estimate of the burden for this collection of information;

- 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.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 21, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011-24630 Filed 9-23-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R7-R-2011-N190; 70138-1263-0000-4A]

Proposed Information Collection; Alaska Guide Service Evaluation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent

burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on March 31, 2012. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by November 25, 2011.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042-PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or INFOCOL@fws.gov (e-mail). Please include "1018-0141" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at INFOCOL@fws.gov (e-mail) or 703-358-2482 (telephone).

SUPPLEMENTARY INFORMATION:

1. *Abstract.* We collect information on FWS Form 3-2349 (Alaska Guide Service Evaluation) to help us evaluate commercial guide services on our national wildlife refuges in the State of Alaska (State). The National Wildlife Refuge Administration Act of 1966, as amended (16 U.S.C. 668dd-ee), authorizes us to permit uses, including commercial visitor services, on national wildlife refuges when we find the activity to be compatible with the purposes for which the refuge was established. With the objective of making available a variety of quality visitor services for wildlife-dependent recreation on National Wildlife Refuge System lands, we issue permits for commercial guide services, including big game hunting, sport fishing, wildlife viewing, river trips, and other guided activities. We use FWS Form 3-2349 as a method to:

- (1) Monitor the quality of services provided by commercial guides.
- (2) Gauge client satisfaction with the services.

- (3) Assess the impacts of the activity on refuge resources.

The client is the best source of information on the quality of commercial guiding services. We collect:

- (1) Client name.
- (2) Guide name(s).
- (3) Type of guided activity.
- (4) Dates and location of guided activity.

- (5) Information on the services expected such as the client's expectations, safety, environmental

impacts, and client's overall satisfaction.

We will encourage respondents to provide any additional comments that they wish regarding the guide service or refuge experience, and ask whether or not they wish to be contacted for additional information.

The above information, in combination with State-required guide activity reports and contacts with guides and clients in the field, provides a comprehensive method for monitoring permitted commercial guide activities. A regular program of client evaluation helps refuge managers detect potential problems with guide services so that we can take corrective actions promptly. In addition, we use this information during the competitive selection process for big game and sport fishing guide permits to evaluate an applicant's ability to provide a quality guiding service.

We will provide the evaluation form to clients by one of several methods:

- (1) The refuge may mail the form to the clients.
- (2) On Web sites of refuges where guide services are permitted.
- (3) Upon request.

II. Data

OMB Control Number: 1018-0141.

Title: Alaska Guide Service Evaluation.

Service Form Number(s): 3-2349.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Clients of permitted commercial guide service providers.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time following use of commercial guide services.

Estimated Annual Number of Respondents: 396.

Estimated Total Annual Responses: 396.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 99.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask 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: September 21, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011-24632 Filed 9-23-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-MB-2011-N189; 91200-1231-9BPP-L2]

Proposed Information Collection; Approval Procedures for Nontoxic Shot and Shot Coatings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on April 30, 2012. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by November 25, 2011.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042-PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or INFOCOL@fws.gov (e-mail). Please include "1018-0067" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at INFOCOL@fws.gov (e-mail) or 703-358-2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits the unauthorized take of migratory birds and authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations in 50 CFR part 20. On January 1, 1991, we banned lead shot for hunting waterfowl and coots in the United States.

The regulations at 50 CFR 20.134 outline the application and approval process for new types of nontoxic shot. When considering approval of a candidate material as nontoxic, we must ensure that it is not hazardous to the environment and that secondary exposure (ingestion of spent shot or its components) is not a hazard to migratory birds. To make that decision, we require each applicant to provide information about the solubility and toxicity of the candidate material. Additionally, for law enforcement purposes, a noninvasive field detection device must be available to distinguish candidate shot from lead shot. This information constitutes the bulk of an application for approval of nontoxic shot. The Director uses the data in the application to decide whether or not to approve a material as nontoxic.

II. Data

OMB Control Number: 1018-0067.
Title: Approval Procedures for Nontoxic Shot and Shot Coatings, 50 CFR 20.134.

Service Form Number(s): None.
Type of Request: Extension of currently approved collection.

Description of Respondents: Businesses that produce and/or market approved nontoxic shot types or nontoxic shot coatings.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Number of Annual Responses: 1.

Completion Time per Response: 3,200 hours.

Estimated Total Annual Burden Hours: 3,200 hours.

Estimated Annual Nonhour Cost Burden: \$25,000.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail 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: September 21, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.
[FR Doc. 2011-24634 Filed 9-23-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R5-FHC-2011-N191; 51320-1334-0000-L4]

Proposed Information Collection; Horseshoe Crab Tagging Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on March 31, 2012. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by November 25, 2011.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042-PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or INFOCOL@fws.gov (e-mail). Please include "1018-0127" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at INFOCOL@fws.gov (e-mail) or 703-358-2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Horseshoe crabs play a vital role commercially, biomedically, and ecologically along the Atlantic coast. Horseshoe crabs are commercially harvested and used as bait in eel and conch fisheries. Biomedical companies along the coast also collect and bleed horseshoe crabs at their facilities. *Limulus Amoebocyte Lysate* is derived from crab blood, which has no synthetic substitute, and is used by pharmaceutical companies to test sterility of products. Finally, migratory shorebirds also depend on the eggs of horseshoe crabs to refuel on their migrations from South America to the Arctic. One bird in particular, the red knot, feeds primarily on horseshoe crab eggs during its stopover. That bird is currently listed as a candidate for protection under the Endangered Species Act.

In 1998, the Atlantic States Marine Fisheries Commission (ASMFC), a management organization with representatives from each State on the Atlantic Coast, developed a horseshoe crab management plan. The ASMFC plan and its subsequent addenda established mandatory State-by-State harvest quotas, and created the 1,500 square mile Carl N. Shuster, Jr. Horseshoe Crab Sanctuary off the mouth of Delaware Bay.

Although restrictive measures have been taken in recent years, populations are increasing slowly. Because horseshoe crabs do not breed until they are 9 years or older, it may take some

time before the population measurably increases. Federal and State agencies, universities, and biomedical companies participate in a Horseshoe Crab Cooperative Tagging Program. The Maryland Fishery Resources Office, Fish and Wildlife Service, maintains the information that we collect under this program and uses it to evaluate migratory patterns, survival, and abundance of horseshoe crabs.

Agencies that tag and release the crabs complete FWS Form 3-2311 (Horseshoe Crab Tagging) and provide the Service with:

- Organization name.
 - Contact person name.
 - Tag number.
 - Sex of crab.
 - Prosomal width.
 - Capture site, latitude, longitude, waterbody, State, and date.
- Members of the public who recover tagged crabs provide the following information using FWS Form 3-2310 (Horseshoe Crab Recapture Report):
- Tag number.
 - Whether or not tag was removed.
 - Whether or not the tag was circular or square.

- Condition of crab.
 - Date captured/found.
 - Crab fate.
 - Finder type.
 - Capture method.
 - Capture location.
 - Reporter information.
 - Comments.
- If the public participant who reports the tagged crab requests information, we send data pertaining to the tagging program and tag and release information on the horseshoe crab he/she found or captured.

II. Data

OMB Control Number: 1018-0127.

Title: Horseshoe Crab Tagging Program.

Service Form Number(s): FWS Forms 3-2310 and 3-2311.

Type of Request: Extension of currently approved collection.

Description of Respondents: Tagging agencies include Federal and State agencies, universities, and biomedical companies. Members of the general public provide recapture information.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion. When horseshoe crabs are tagged and when horseshoe crabs are found or captured.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
FWS Form 3-2310	950	2,250	5 minutes	188
FWS Form 3-2311	18	18	95 hours*	1,710
Totals	968	2,268	.....	1,898

* Average time required per response is dependent on the number of tags applied by an agency in 1 year. Agencies tag between 25 and 9,000 horseshoe crabs annually, taking between 2 to 5 minutes per crab to tag, record, and report data. Each agency determines the number of tags it will apply.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask 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: September 21, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011-24639 Filed 9-23-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-PWR-PWRO-0621-7758; 2310-0082-422]

Drakes Bay Oyster Company Special-Use Permit, Draft Environmental Impact Statement, Point Reyes National Seashore, CA

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service announces the availability of a draft

environmental impact statement to consider the Drakes Bay Oyster Company Special-use permit in Drakes Estero, Point Reyes National Seashore, California.

DATES: We, the National Park Service, will accept all comments on the draft environmental impact statement that are submitted or postmarked no later than 60 days after the date the Environmental Protection Agency publishes its notice of filing of the DEIS in the **Federal Register**. We intend to hold public meetings in several San Francisco Bay Area locations during the public review period. We will announce details regarding the exact times and locations of these meetings on the Point Reyes National Seashore Web site, at <http://parkplanning.nps.gov/pore> (click on the Drakes Bay Oyster Company Special-use permit EIS link), and through local and regional media at least 15 days in advance of the meetings.

ADDRESSES: Information will be available for public review and comment online at <http://parkplanning.nps.gov/pore> (click on the Drakes Bay Oyster Company Special-use permit EIS link) and in the office of the Superintendent, Point Reyes National Seashore, 1 Bear Valley Road, Point Reyes Station, CA 94956, (415) 464-5162.

Submit comments on the draft environmental impact statement by any one of the following methods:

- **Internet:** We encourage you to comment via the Internet at NPS Web site in the **ADDRESSES** section.
- **Mail:** Mail comments to Point Reyes National Seashore, ATTN: DBOC SUP DEIS, 1 Bear Valley Road, Point Reyes Station, CA 94956.
- **Hand delivery:** Deliver comments to the Office of the Superintendent at Point Reyes National Seashore, 1 Bear Valley Road, Point Reyes Station, CA 94956.
- **Other written:** We will accept written comments at the public meetings.

We will not accept comments by fax, e-mail, or in any other way than those specified above. We will not accept bulk comments in any format (hard copy or

electronic) submitted on behalf of others.

Before including your address, phone number, e-mail 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.

FOR FURTHER INFORMATION CONTACT:

Melanie Gunn, Outreach Coordinator, Point Reyes National Seashore, 1 Bear Valley Road, Point Reyes Station, CA 94956, (415) 464-5131. More information regarding this EIS is also available at http://www.nps.gov/pore/parkmgmt/planning_dboc_sup.htm.

SUPPLEMENTARY INFORMATION:

Under Section 124 of Public Law 111-88, the Secretary has the authority to issue a special-use permit (SUP) for 10 years to Drakes Bay Oyster Company (DBOC) for its shellfish operation, which consists of commercial production, harvesting, processing, and sale of shellfish at Point Reyes National Seashore. The existing reservation of use and occupancy (RUO) and associated SUP held by the Company will expire on November 30, 2012, and the Company has requested a new permit.

Although the Secretary's authority under Section 124 is "notwithstanding any other provision of law," it has been determined that it would help inform the decision-making process to prepare an EIS and otherwise follow National Environmental Policy Act (NEPA) procedures. The purpose of the document is to use the NEPA process on behalf of the Secretary to engage the public and evaluate the effects of issuing a SUP for the commercial shellfish operation. The results of the NEPA process will be used to inform the decision of whether a new SUP should be issued to Drakes Bay Oyster Company for 10 years.

Project Objectives

- Manage natural and cultural resources to support their protection, restoration, and preservation.
- Manage wilderness and potential wilderness areas to preserve the character and qualities for which they were designated.
- Provide opportunities for visitor use and enjoyment of park resources.

The draft environmental impact statement considers four alternatives.

Alternative A. No New Special-Use Permit—Conversion to Wilderness (No Action). This alternative considers the expiration of existing RUO and SUP, and subsequent conversion of the area to Wilderness consistent with Public Law 94-567. The existing SUP and RUO expire on November 30, 2012. The Secretary would not exercise the discretion granted to him under Section 124 of Public Law 111-88 to issue a new 10-year SUP. Upon removal of the non-conforming structures and uses from Drakes Estero, NPS would convert the area from potential wilderness to wilderness.

Alternative B. Issue New Special-Use Permit—Existing Onshore Facilities and Infrastructure and Offshore Operations Would Be Allowed for a Period of 10 Years. This alternative considers a level of use consistent with conditions that were present in fall 2010 when NPS initiated evaluation under the environmental impact statement. The existing SUP and RUO expire on November 30, 2012. The Secretary would exercise the discretion granted to him under Section 124 to issue to DBOC a new 10-year SUP, expiring November 30, 2022.

Alternative C. Issue new special-use permit—onshore facilities and infrastructure and offshore operations present in 2008 would be allowed for a period of 10 years. This alternative considers a level of use that is consistent with the conditions and operations that existed when the current SUP was signed in April 2008. The existing SUP and RUO expire on November 30, 2012. The Secretary would exercise the discretion granted to him under Section 124 to issue to DBOC a new 10-year SUP, expiring November 30, 2022.

Alternative D. Issue New Special-Use Permit—Expanded Onshore Development and Offshore Operations Would Be Allowed for a Period of 10 Years. This alternative considers expansion of operations and development of new infrastructure consistent with the permittee's requests submitted for consideration as part of this EIS process. The existing SUP and

RUO would expire on November 30, 2012. The Secretary would exercise the discretion granted to him under Section 124 to issue a new 10-year special use permit to DBOC, expiring November 30, 2022.

George J. Turnbull,
Acting Regional Director, Pacific West Region.
[FR Doc. 2011-24658 Filed 9-23-11; 8:45 am]
BILLING CODE 4312-FW-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting and the form OSM-1 has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and its expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 26, 2011, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208-2783, or electronically at jtrelease@osmre.gov. You may also review this collection by going to <http://www.reginfo.gov> (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI-OSMRE).

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395-5806 or via e-mail to OIRADocket@omb.eop.gov. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240, or electronically

to jtrelease@osmre.gov. Please refer to OMB control number 1029-0063 in your correspondence.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collections of information found at 30 CFR 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting and the form it implements, the OSM-1, Coal Reclamation Fee Report, and the Amended OSM-1 form. OSM is requesting a 3-year term of approval for these information collection activities.

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 number for this collection of information is 1029-0063. Responses are mandatory.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on May 17, 2011 (76 FR 28454). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting.

OMB Control Number: 1029-0063.

Summary: The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and section 401 of P.L. 95-87. Individual reclamation fee payment liability is based on this information. Without the collection of information OSM could not implement its regulatory responsibilities and collect the fee.

Bureau Form Numbers: OSM-1, Amended OSM-1.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine permittees.

Total Annual Responses: 13,269.

Total Annual Burden Hours: 853.

Send comments on the need for the collection of information for the performance of the functions of the

agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, e-mail 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: September 20, 2011.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011-24534 Filed 9-23-11; 8:45 am]

BILLING CODE 4310-05-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-712]

In the Matter of Certain Digital Set-Top Boxes and Components Thereof; Notice of Commission Determination to Grant Respondent's Petition For Reconsideration of the Commission Decision Not to Review a Final Initial Determination Finding a Violation of Section 337; Termination of the Investigation With a Finding of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (Athe Commission@) has determined to reconsider its decision not to review the final initial determination (AID@) issued by the presiding administrative law judge (AALJ@) on May 20, 2011, in the above-captioned investigation, and, on review, to find no violation of section 337 and terminate the investigation.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3104. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business

hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on April 21, 2010, based on a complaint filed by Verizon Communications Inc. and Verizon Services Corp. (collectively, AVerizon@), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain digital set-top boxes and components thereof, that infringe one or more of claim 14 of U.S. Patent No. 5,635,979; claim 38 of U.S. Patent No. 5,666,293; claim 13 of U.S. Patent No. 6,381,748 ("the '748 patent"); claim 14 of U.S. Patent No. 6,367,078; and claim 5 of U.S. Patent No. 7,561,214. 75 FR. 20861 (2010). Complainant named Cablevision Systems Corp. of Bethpage, New York (ACablevision@) as the only respondent. *Id.*

On May 20, 2011, the ALJ issued his final ID finding a violation of section 337. Specifically, the ALJ found that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital set-top boxes and components thereof that infringe claim 13 of the >748 patent. On July 21, 2011, the Commission determined not to review the ALJ's final ID, and requested that the parties file written submissions on the issues of remedy, the public interest, and bonding. See Notice of Commission Determination Not To Review a Final Initial Determination (Dated July 21, 2011). The parties filed timely opening and responsive submissions.

On August 8, 2011, respondent Cablevision filed a petition for reconsideration of the Commission's determination not to review the ALJ's finding of a violation of section 337 based on infringement of claim 13 of the >748 patent. Respondent sought reconsideration of the Commission's determination based on the August 2, 2011, entry of final judgment by the U.S. District Court for the Eastern District of

Virginia in *ActiveVideo Networks, Inc. v. Verizon Commc'ns Inc.*, No. 2:10-cv-248 (E.D. Va.) and the previous ruling in that action that claim 13 of the >748 patent is invalid. Complainant Verizon filed an opposition to respondent's petition, whereas the Commission investigative attorney filed a response supporting respondent's petition.

Having examined the record in this investigation, the Commission has determined to grant respondent's petition for reconsideration and waive its requirement that any petition for reconsideration be filed within 14 days of the action taken. Accordingly, the Commission has determined to review the ALJ's final ID and, on review, to find that there is no violation of section 337 in this investigation based on the preclusive effects of the district court's finding of invalidity. The investigation is terminated. A Commission opinion in support of this determination will be issued shortly.

The authority for this action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 201.4 and 210.45-50 of the Commission's Rules of Practice and Procedure (19 CFR 201.4, 210.45-50).

By order of the Commission.

Issued: September 20, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011-24576 Filed 9-23-11; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Clean Air Act

Notice is hereby given that on September 12, 2011, a proposed Consent Decree in *United States et al. v. J.L. French LLC et al.*, Civil Action No. 2:11-CV-00860, was lodged with the United States District Court for the Eastern District of Wisconsin.

The Consent Decree would resolve claims for injunctive relief and the assessment of civil penalties asserted by the United States and the Commonwealth of Kentucky (collectively, "Plaintiffs") against J.L. French LLC and a related corporate entity Nelson Metal Products LLC (collectively, "Defendants") pursuant to Sections 113(b) and 304(a)(1) of the Clean Air Act, 42 U.S.C. 7413(b) and 7604(a)(1).

Defendants process aluminum scrap and dross to produce various secondary aluminum products, a process that results in emissions of regulated air

pollutants, including dioxins and furans, hydrogen chloride, particulate matter, and hydrocarbons. The Plaintiffs' complaint, filed concurrently with the Consent Decree, alleges that Defendants violated Section 112 of the Clean Air Act, 42 U.S.C. 7412; the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Secondary Aluminum Production, codified at 40 CFR part 63, Subparts A and RRR; and related provisions of Kentucky law at three of its aluminum production facilities. Specifically, the complaint alleges that Defendant failed to demonstrate compliance with emission standards through valid performance testing, to design and install adequate capture and collection systems, to correctly establish and monitor operating parameters, and to comply with recordkeeping and reporting requirements.

The Consent Decree would require Defendants to retest emission units using model test protocols, adopt new monitoring practices, correct deficiencies in recordkeeping and reporting documents, shut down certain emission units, and apply for new operating permits at its facilities. The Consent Decree would also provide for an \$80,000 civil penalty, with \$50,000 paid to the United States and \$30,000 paid to the Commonwealth of Kentucky, based on a limited ability to pay as determined by the United States' review of Defendant's financial information.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States et al. v. J.L. French LLC, et al.*, D.J. Ref. No. 90-5-2-1-08881/1.

The Consent Decree may be examined at the United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone

confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$16.00 for a copy of the complete Consent Decree (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011-24604 Filed 9-23-11; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: [D-11513, 2011-18 Northern Trust Corporation; D-11576, 2011-19 Bank of America, NA et al.; and D-11659, 2011-20 Pacific Capital Bancorp Amended and Restated Incentive and Investment and Salary Savings Plan (the Plan)].

SUPPLEMENTARY INFORMATION: A notice was published in the *Federal Register* of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were

received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Northern Trust Corporation Located in Chicago, IL

[Prohibited Transaction Exemption 2011-18; Exemption Application No. D-11513]

Exemption

Section I. Transactions

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective October 31, 2008, to the sale (the Sale) by a Plan (as defined in Section III(e)) of an Auction Rate Security (ARS, as defined in Section III(c)) to Northern Trust Corporation or an affiliate thereof (Northern), if the conditions of Section II are met.¹

Section II. Conditions

(a) The Plan acquired the ARS in connection with brokerage or advisory services provided by Northern to the Plan;

(b) The last auction for the ARS was unsuccessful;

(c) The Sale is made pursuant to a written offer by Northern (the Offer) containing all of the material terms of the Sale, in which the Plan would have

¹ For purposes of this exemption, references to section 406 of ERISA should be read to refer also to the corresponding provisions of section 4975 of the Code.

the opportunity to sell the ARS but would be under no obligation to do so, and would include but is not limited to the following:

(i) Northern will distribute each Offer to its eligible customers, marked, or otherwise prepared in a manner reasonably designed to prominently indicate to the recipient the subject matter, importance, and time-sensitivity of the information provided;

(ii) Acceptance of an Offer would cause Northern to purchase the eligible ARS at the next applicable coupon interest payment date as described therein. Purchase dates may vary depending on when an Offer is accepted and when the next coupon interest payment date for such eligible ARS occurs;

(iii) Acceptance of the Offer could be withdrawn at any time until three business days prior to the payment date; and

(iv) The Offer will comply with "plain English" standards and will include: A reference to a Web site containing a description of the eligibility criteria used by Northern; a reference to where the Plan fiduciary can find a list of eligible ARS held in the account (including the amount and other identifying information); the background of the Offer; the methods and timing by which eligible customers may accept the Offer; the manner of determining the purchase dates for eligible ARS pursuant to the Offer; the timing of payment for eligible ARS purchased pursuant to the Offer; the methods and timing by which a customer may elect to withdraw its acceptance of the Offer; the expiration date of the Offer; a suggestion that eligible customers consult their tax advisors to determine the tax consequences, if any, of accepting the Offer and to ensure that accounting and financial reporting complies with applicable accounting guidance; and how to obtain additional information concerning the Offer;

(d) The Sale is a one-time transaction for no consideration other than cash payment against prompt delivery of the ARS;

(e) The sales price for the ARS is equal to the par value of the ARS, plus any accrued but unpaid interest or dividends as applicable, as of the date of the Sale;

(f) The Plan does not waive any rights or claims in connection with the Sale;

(g) The decision to accept the Offer or retain the ARS is made by an Independent Fiduciary (as defined in

section III(d)).² Notwithstanding the foregoing, in the case of an individual retirement account (IRA) which is beneficially owned by an employee, officer, director or partner of Northern, the decision to accept the Offer or retain the ARS may be made by such employee, officer, director, or partner;

(h) Neither Northern nor an affiliate thereof exercises investment discretion or renders investment advice, within the meaning of 29 CFR 2510.3-21(c), in connection with the decision to sell or retain the ARS;

(i) The Plan does not pay any commissions or any other transaction costs with respect to the Sale;

(j) The Sale is not part of an arrangement, agreement, or understanding designed to benefit a party in interest or disqualified person to the Plan;

(k) Northern maintains, or causes to be maintained, for a period of six (6) years from the date of the Sale such records as are necessary to enable the persons described below in paragraph (l)(i), to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest or disqualified person with respect to a Plan which engages in a Sale, other than Northern and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of ERISA or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required below by paragraph (l)(i); and

(ii) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Northern or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period; and

(l)(i) Except as provided below in paragraph (l)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of ERISA, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by—

² The Department notes that ERISA's general standards of fiduciary conduct would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the ARS to Northern for the par value of the ARS. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with this type of transaction, following disclosure by Northern of all the relevant information.

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan, including an IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Sale, or any authorized employee or representative of these entities;

(ii) None of the persons described above in paragraph (l)(i)(B)-(C) shall be authorized to examine trade secrets of Northern, or commercial or financial information which is privileged or confidential; and

(iii) Should Northern refuse to disclose information on the basis that such information is exempt from disclosure, Northern shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

III. Definitions

For purposes of this exemption:

(a) The term "affiliate" of another person means: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, partner, employee, or relative (as defined in section 3(15) of ERISA) of such other person; and (3) any corporation or partnership of which such other person is an officer, director, partner, or employee;

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "Auction Rate Security" or "ARS" means a debt obligation of a corporation, business entity, municipality or other governmental agency with a nominal long-term maturity for which the interest rate is reset through a Dutch Auction typically held every 7, 14, 28, 35, or 49 days, with interest paid at the end of each auction period. The term also means preferred stock issued by a corporation or other business entity for which the dividend is reset and paid through the same process;

(d) The term "Independent Fiduciary" shall mean the fiduciary of the Plan making the decision to engage the Plan in the covered transactions, provided

that such fiduciary may not be Northern or an affiliate thereof; and

(e) The term "Plan" means an individual retirement account (an IRA) or similar account described in section 4975(e)(1)(B) through (F) of the Code; or an employee benefit plan as defined in section 3(3) of ERISA.

DATES: Effective Date: This exemption is effective as of October 31, 2008.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 5, 2011 at 76 FR 25711.

Written Comments

No written comments were received by the Department with respect to the notice of proposed exemption.³

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693-8557. (This is not a toll-free number.)

Bank of America, NA et al., Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 2011-19; Exemption Application No. D-11576]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply: (a) From January 1, 2009 to October 7, 2010: (1) To the operation of the RPT Stable Value Agreements, pursuant to the terms thereof, and to the receipt of a fee by BANA in connection therewith; and (2) to transactions under the RPT Stable Value Agreements (the RPT Wrap-Related Transactions); (b) from April 23, 2009 to October 7, 2010: (1) To the execution of the RPT Special Purpose Wrap Agreement; (2) to the operation of the RPT Special Purpose Wrap Agreement, pursuant to the terms thereof, and to the receipt of a fee by BANA in connection therewith; and (3) to transactions under the RPT Special Purpose Wrap Agreement (the Special Purpose Wrap-Related Transactions); and (c) from January 1, 2009 to April 8, 2011: (1) To the operation of the Separately Managed Account Wrap Agreements, pursuant to the terms thereof, and to the receipt of a fee by BANA in connection therewith; and (2) to transactions under the Separately Managed Account Wrap Agreements (the Separately Managed Account Wrap-Related Transactions), provided that the

following conditions, as applicable, have been met.³

Section II. Conditions Applicable to Transactions Described in Section I(a).

(a) Effective June 1, 2009, BlackRock Advisors may change the formula for calculating the Crediting Rate with respect to the Global Wrap Account or the Global Buy and Hold Account (either, a Global Account) only after obtaining prior approval from:

(1) Each financial institution that has entered into a wrap agreement covering assets included in the applicable Global Account; and

(2) The Independent Fiduciary, after BlackRock Advisors has provided the Independent Fiduciary with any information that the Independent Fiduciary has reasonably requested in determining whether to approve the proposed change in the Crediting Rate formula;

(b) BANA may not reset a Crediting Rate attributable to a Global Account more frequently than on a monthly basis unless:

(1) A crediting rate attributable to a non-BANA wrap agreement covering assets in the same Global Account is reset more frequently than on a monthly basis; and

(2) BANA resets the Crediting Rate at the same time, and in the same manner, as such other non-BANA wrap agreement crediting rate;

(c) Each financial institution entering into a wrap agreement covering assets included in a Global Account obtains information from BlackRock Advisors on a monthly basis regarding the investments included in such Global Account. This information must be sufficiently detailed to enable the financial institution to independently verify that the applicable Crediting Rate was calculated properly;

(d) The fee received by BANA in connection with the BANA RPT Global Wrap Agreement or the BANA RPT Buy and Hold Wrap Agreement will be reasonable relative to market conditions and risks. Notwithstanding the above, in no event shall the fee received by BANA under the BANA RPT Global Wrap Agreement or the BANA RPT Buy and Hold Wrap Agreement exceed the maximum percentage fee paid to any other financial institution pursuant to a wrap agreement covering assets in the applicable Global Wrap Account or the Global Buy and Hold Account, as relevant;

³ For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(e) The Trustee may trigger immunization with respect to the BANA RPT Global Wrap Agreement only if:

(1) The Trustee triggers immunization with respect to another wrap agreement covering assets in the Global Wrap Account immediately prior to, or at the same time as, the Trustee triggers immunization with respect to the BANA RPT Global Wrap Agreement; or

(2) A financial institution not affiliated with BANA triggers immunization with respect to assets in the Global Wrap Account immediately prior to, or at the same time as, the Trustee triggers immunization with respect to the BANA RPT Global Wrap Agreement; or

(3) The Trustee determines that BANA is no longer financially responsible and the Independent Fiduciary determines that immunization is in the interests of Plans invested in RPT;

(f) Assets held in RPT will be valued at their current fair market value on a daily basis utilizing the following BlackRock firm-wide approved valuation process:

(1) Valuations will be performed without regard to whether the security is held in RPT or another account or commingled vehicle advised by BlackRock;

(2) Valuations will be based on the price that may be obtained in a current arm's-length sale to an unrelated third party;

(3) BlackRock will first obtain prices for securities from independent third-party sources, including index providers, broker-dealers and independent pricing services. BlackRock will maintain a hierarchy that prioritizes pricing sources by asset class or type and will value securities based on the price generated by the highest priority source. The hierarchy may vary by asset class or type, but not for a particular security;

(4) If no third-party sources are available to value a security or the price generated by the third-party falls outside specified statistical norms and after review BlackRock determines that such price is not reliable, BlackRock will value the security using an analytic methodology in accordance with its written valuation policy. If BlackRock values a security using such analytic methodology, the Independent Fiduciary will review that methodology and valuation and will obtain its own valuation if it deems appropriate; and

(5) Values determined in accordance with (1) through (4) above will be provided to each financial institution that has entered into a wrap agreement covering assets in the Global Wrap

Account or the Global Buy and Hold Account, as the case may be;

(g) Each financial institution that has entered into a wrap agreement covering assets in the Global Wrap Account and/or the Global Buy and Hold Account, including BANA, may raise an objection regarding a particular security's valuation, regardless of the source of such valuation. Once an objection is raised, wrap providers other than BANA may determine a new valuation for such security and BANA must accept this new valuation, provided that BANA is given reasonably satisfactory documentation supporting the new valuation;

(h) Prior to a Plan sponsor's decision to include RPT as an investment option for its Plan's participants, the Trustee will provide the Plan sponsor with the following:

(1) RPT's Declaration of Trust (as amended and restated as of April 23, 2009, and as may be further amended from time to time);

(2) A purchase agreement to be entered into by the Plan fiduciary and the Trustee;

(3) Upon request, a copy of the Annual Report for RPT and a fact sheet describing RPT's investment objective and strategy and a performance analysis; and

(4) A copy of the proposed exemption or a copy of the final exemption;

(i) The Trustee will provide the following ongoing disclosures to Plan fiduciaries regarding a Plan's investment in RPT:

(1) The Annual Report for RPT; and
(2) The Plan's Investment Summary and Accounting;

(j) Plan participants will be provided the following disclosures regarding their investment in RPT:

(1) Prior to and following their initial investment, information describing the investment objectives and performance of RPT; and

(2) A statement, delivered at least quarterly, that sets forth the value of the participant's account contributions, withdrawals, distributions, loans and change in value since the prior statement;

(k) The Independent Fiduciary must receive a copy of any RPT Stable Value Agreement amendment prior to the effective date of such amendment. The Independent Fiduciary must review and approve the amendment prior to its implementation, except that no such review and approval shall be required for an amendment that is purely ministerial in nature;

(l) The dollar amount of Global Wrap Account assets covered by the BANA RPT Global Wrap Agreement shall not

exceed 50% of the total assets held in such Account, and the terms associated with the BANA RPT Global Wrap Agreement at the time such Agreement was entered into, amended, modified or renewed shall be no less favorable to RPT than the terms associated with comparable agreements with unrelated parties;

(m) The dollar amount of Global Buy and Hold Account assets covered by the BANA RPT Buy and Hold Wrap Agreement shall not exceed 60% of the total assets held in such Account, and the terms associated with the BANA RPT Buy and Hold Wrap Agreement at the time such Agreement was entered into, amended, modified or renewed shall be no less favorable to RPT than the terms associated with comparable agreements with unrelated parties; and

(n) Any RPT Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under the RPT Stable Value Agreements; or (2) the performance by BANA, the Trustee, or BlackRock Advisors of their obligations under the RPT Stable Value Agreements, shall be subject to prior review and approval by the Independent Fiduciary if such exercise or performance affects the Crediting Rate or would otherwise have an adverse impact on the book value of a participant's or beneficiary's investment in RPT.

Section III. Conditions Applicable to Transactions Described in Section I(b)

(a) Below Investment Grade Securities will be transferred automatically to a RPT account (the Type D1 Account) and covered by the RPT Special Purpose Wrap Agreement. The RPT Special Purpose Wrap Agreement shall cover up to in the aggregate \$200 million of the following:

(1) Book value of Downgraded Securities that have not been sold; and/or

(2) Aggregate unamortized realized losses with respect to sold Downgraded Securities;

(b) The Minimum Ratio shall be maintained;

(c) The total book value of the assets included in the Type D1 Account and covered by the RPT Special Purpose Wrap, including the Permitted Securities, will not exceed \$700 million without the prior written consent of the Trustee, BlackRock Advisors, BANA and the Independent Fiduciary;

(d) The crediting rate with respect to the Type D1 Account (the Type D1 Account Crediting Rate) shall be 0.00% at times when there are unamortized losses (whether realized or unrealized)

attributable to Downgraded Securities in the Type D1 Account, calculated in accordance with the provisions of the RPT Special Purpose Wrap Agreement. In the event there are no unamortized losses (i.e., neither realized nor unrealized) recorded to the Type D1 Account which relate to Downgraded Securities, the Type D1 Account Crediting Rate shall be determined in accordance with a formula that has been reviewed by the Independent Fiduciary;

(e) Effective June 1, 2009, BlackRock Advisors may change the formula for calculating the Type D1 Account Crediting Rate only after obtaining prior approval from BANA and the Independent Fiduciary. BlackRock Advisors shall provide the Independent Fiduciary with any information it may reasonably request in determining whether to approve a proposed change in the Type D1 Account Crediting Rate formula;

(f) The Type D1 Account Crediting Rate will not be reset more frequently than on a monthly basis;

(g) Permitted Securities will have a maximum duration of 3.5 years at the time of purchase;

(h) The fee charged by BANA for the RPT Special Purpose Wrap will be reasonable relative to market conditions and risks, as determined annually by the Independent Fiduciary.

Notwithstanding the above, in no event shall such fee exceed 15 basis points per annum of the total book value of assets included in the Type D1 Account;

(i) Assets covered by the RPT Special Purpose Wrap Agreement will be valued in accordance with the methodology specified in section II(f) above, provided, however, that if the Independent Fiduciary obtains a valuation, such valuation will be binding on BANA:

(j) The Trustee has the right to immunize the portfolio of securities included in the Type D1 Account only if BANA elects to terminate the RPT Special Purpose Wrap Agreement, or if BANA defaults under the RPT Special Purpose Wrap Agreement. If an immunization election becomes effective (the RPT Special Purpose Immunization Date), the RPT Special Purpose Wrap Agreement would terminate on the later of: (1) The date that is the number of years after the RPT Special Purpose Immunization Date which does not extend beyond the modified duration (as defined in the RPT Special Purpose Wrap Agreement) of the underlying assets on the RPT Special Purpose Immunization Date; or (2) the first date on which the market value of the underlying assets equals or

exceeds the book value under the wrap agreement;

(k) No Below Investment Grade Securities will be added to the RPT Special Purpose Wrap Agreement after April 23, 2011, unless otherwise agreed by BANA, the Trustee, and the Independent Fiduciary. No party to the RPT Special Purpose Wrap Agreement is obligated to amend or extend the RPT Special Purpose Wrap Agreement;

(l) The tasks performed by the Independent Fiduciary will include:

(1) Determining whether the RPT Special Purpose Wrap Agreement and the portfolio arrangement for the Type D1 Account (including the wrap fee payable to BANA, the Minimum Ratio, the prefunding of the RPT Special Purpose Wrap Agreement and the formula for resetting the Type D1 Account Crediting Rate) are prudent and in the best interest of participants and beneficiaries of Plans investing in RPT;

(2) Reviewing valuations generated by BlackRock (in connection with the RPT Special Purpose Wrap Agreement) in any situation where BlackRock is unable to obtain a reliable valuation from independent third party sources. If, after such review, the Independent Fiduciary deems appropriate, the Independent Fiduciary will obtain an independent valuation which will be binding on the parties;

(3) Reviewing and monitoring whether the Type D1 Account Crediting Rate is calculated correctly;

(4) Monitoring the addition and removal of Below Investment Grade Securities and any changes in Permitted Securities in the Type D1 Account, and opining, in a written report, whether such addition, removal or change is appropriate;

(5) If BANA objects to the calculation by the Trustee or its designee of the Type D1 Account Crediting Rate or the information used to calculate the Type D1 Account Crediting Rate, the Independent Fiduciary will make a conclusive and binding determination regarding such calculation or information;

(6) Determining whether to approve any proposed change to the Type D1 Account Crediting Rate formula, including any proposed adjustment to the duration component of the Type D1 Account Crediting Rate formula;

(7) No later than April 30, 2011, working with BANA, BlackRock, and the Trustee to review and determine whether additional Below Investment Grade Securities may be transferred to the Type D1 Account and be covered by the RPT Special Purpose Wrap Agreement;

(8) Making an initial and, thereafter, annual determination regarding whether the fee described in paragraph (h) of this section is reasonable relative to the specific attributes of the RPT Special Purpose Wrap Agreement;

(9) Making an annual determination regarding whether the continued maintenance of the RPT Special Purpose Wrap Agreement is appropriate and in the interest of Plans;

(10) Making a monthly determination regarding whether the appropriate Type D1 Crediting Rate formula is being used; and

(11) Reviewing and approving any amendment to a RPT Special Purpose Wrap Agreement consistent with paragraph (n) of this section;

(m) Any Special Purpose Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under the RPT Special Purpose Wrap Agreement; or (2) the performance by BANA, the Trustee, or BlackRock Advisors of their obligations under the RPT Special Purpose Wrap Agreement, shall be subject to prior review and approval by the Independent Fiduciary if such exercise or performance affects the Type D1 Crediting Rate or otherwise would have an adverse impact on the book value of a participant's or beneficiary's investment in RPT; and

(n) The Independent Fiduciary must receive a copy of any RPT Special Purpose Wrap Agreement amendment prior to the effective date of such amendment. The Independent Fiduciary must review and approve the amendment prior to its implementation, except that no such review and approval shall be required for an amendment that is purely ministerial in nature.

Section IV. Conditions Applicable to Transactions Described in Section I(c)

(a) Effective June 1, 2009, BlackRock Advisors may change the formula for calculating the Crediting Rate with respect to each Separately Managed Account Wrap Agreement only after obtaining prior approval from BANA and the Independent Fiduciary. BlackRock Advisors shall provide the Independent Fiduciary with any information it may reasonably request in determining whether to approve a proposed change in the Crediting Rate formula;

(b) Effective June 1, 2009, the Crediting Rate will be reset no more frequently than on a monthly basis;

(c) BANA will not receive a fee under the BANA Wal-Mart Separately Managed Wrap Agreement in excess of the maximum percentage fee received by any other Tier 3 Wrap Provider in the

Wal-Mart Separately Managed Account; and BANA will not receive a fee under the BANA Hertz Separately Managed Wrap Agreement in excess of the maximum percentage fee received by any other financial institution that has entered into a wrap agreement covering assets in the Hertz Separately Managed Account;

(d) Assets covered under each Separately Managed Account Wrap Agreement will be valued in accordance with the same methodology specified in section II(f) above; provided, however, that if BANA objects to the valuation of any asset, the Independent Fiduciary will make a binding determination of the value of the asset;

(e) The tasks performed by the Independent Fiduciary will include:

(1) Conducting a monthly review of the Crediting Rate, including, confirming: (A) The book value of the portfolio of assets wrapped by each Separately Managed Account Wrap Agreement; (B) the valuation of securities; (C) the duration of securities; (D) the market yield of securities; and (E) that the Crediting Rate formula was calculated properly;

(2) Reviewing and approving any proposed amendment to a Separately Managed Wrap Agreement consistent with paragraph (i) below;

(3) Reviewing any exercise of contract provisions by any of BANA, BlackRock Advisors or, in the case of the BANA Wal-Mart Separately Managed Wrap Agreement, the Trustee, and analyze its potential impact on investors;

(4) Evaluating any changes to the fees paid to BANA under each Separately Managed Account Wrap Agreement to determine reasonableness relative to market conditions and risks; and

(5) Providing quarterly reports to BlackRock Advisors and to the named fiduciaries of the Wal-Mart Plan and the Hertz Plan. These reports must certify that the Independent Fiduciary has reviewed the factors described above and state whether BlackRock Advisors has complied with all requirements of the contract. The Independent Fiduciary will inform the named fiduciaries of a Plan if it believes that BANA or BlackRock Advisors has taken any actions that are not in the best interests of the participants and beneficiaries in the Wal-Mart Plan or the Hertz Plan, as relevant;

(f) The Separately Managed Account Wrap Agreements shall authorize the Independent Fiduciary to:

(1) Review and approve any proposed changes in the formula for calculating the Crediting Rate, prior to implementation of any such change;

(2) If BlackRock Advisors generates its own valuation, review the valuation, and if the Independent Fiduciary deems appropriate, obtain an independent valuation, which shall be binding on the parties, subject to BANA's right to raise an objection to any valuation;

(3) If BANA objects to the valuation of any asset, make a binding determination of the value of the asset;

(g) The named fiduciaries (or their authorized representatives) for the Wal-Mart Plan have the right to terminate BlackRock Advisors, as investment manager for the Wal-Mart Separately Managed Account, on 90 days' written notice. The named fiduciaries (or their authorized representatives) for the Hertz Plan have the right to terminate BlackRock Advisors as investment manager for the Hertz Separately Managed Account, on 30 days' written notice;

(h) Any Separately Managed Account Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under a Separately Managed Account Wrap Agreement; or (2) the performance by BANA, the Trustee, or BlackRock Advisors of their obligations under a Separately Managed Wrap Agreement: Shall be subject to prior review and approval by the Independent Fiduciary if such exercise or performance affects the Crediting Rate or otherwise would have an adverse impact on the book value of a participant's or beneficiary's investment in RPT;

(i) The Independent Fiduciary must receive a copy of any amendment contemplated for a Separately Managed Wrap Agreement. The Independent Fiduciary must review and approve the amendment prior to its implementation, except that no such review and approval shall be required for an amendment that is purely ministerial in nature; and

(j) BlackRock may not terminate a Separately Managed Account Wrap Agreement without the prior approval of the Independent Fiduciary.

Section V. General Conditions

(a) BlackRock Advisors shall maintain in the United States the records necessary to enable the persons described in (b) below to determine whether the conditions of this exemption were met, except that:

(1) If the records necessary to enable the persons described in (b) below to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of BlackRock Advisors, then no prohibited transaction will be considered to have occurred solely on

the basis of the unavailability of those records; and

(2) No party in interest other than BlackRock Advisors shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records have not been maintained or are not available for examination as required by paragraph (b) below;

(b) Except as provided in paragraph (c) of this section V and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in section V(a) are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any fiduciary of a Plan participating in RPT or the Hertz Plan or the Wal-Mart Plan;

(3) Any participant or beneficiary of a Plan participating in RPT or the Hertz Plan or the Wal-Mart Plan; or

(4) The Independent Fiduciary.

(c) None of the persons described above in paragraphs (2), (3), and (4) of paragraph (b) of this section V shall be authorized to examine trade secrets of BlackRock, BANA, the Trustee or any of their Affiliates, or any commercial or financial information which is privileged or confidential. Should BlackRock Advisors refuse to disclose information on the basis that such information is exempt from disclosure, BlackRock Advisors shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information; and

(d) Promptly following publication of this final exemption in the **Federal Register**, the Trustee or BlackRock Advisors will provide a copy of the final exemption to the Plan sponsor of each Plan invested in RPT, and to the Plan sponsor of the Hertz Plan, and to the Plan sponsor of the Wal-Mart Plan.

Section VI. Definitions

(a) The term Act means: The Employee Retirement Income Security Act of 1974, as amended;

(b) The term Affiliate means: Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such person;

(c) The term BANA means: Bank of America, N.A. and its Affiliates;

(d) The term BANA Hertz Separately Managed Wrap Agreement means: The agreement dated as of July 27, 2007 (and amended effective as of December 31, 2008) among BANA, BlackRock Advisors (as investment manager for a portion of the assets of the Hertz Plan), and the Bank of New York Mellon (the successor by operation of law to Mellon Bank N.A., and the trustee of the trust created pursuant to the Hertz Plan), as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to a portion of the assets held in the Hertz Separately Managed Account;

(e) The term BANA RPT Buy and Hold Wrap Agreement means: The agreement dated as of October 16, 1996, between Barclays Bank PLC and the Trustee (as assigned to BANA as of April 1, 1998, and amended effective as of December 31, 2008), as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to an undivided portion of the assets held in the Global Buy and Hold Account;

(f) The term BANA RPT Global Wrap Agreement means: The agreement dated as of May 1, 2004 (and amended effective as of December 31, 2008) between BANA and the Trustee, as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to an undivided portion of the assets held in the Global Wrap Account;

(g) The term BANA Wal-Mart Separately Managed Wrap Agreement means: The agreement dated as of August 19, 2003 (and amended effective as of December 31, 2008) between BANA and the Trustee, as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to a portion of the assets held in the Wal-Mart Separately Managed Account;

(h) The term Below Investment Grade Security means: Securities that cease to be covered by a benefit responsive contract in RPT (other than by the RPT Special Purpose Wrap Agreement) solely as a result of a downgrade in the credit rating of the security to below Baa3, BBB- or BBB- by Moody's Investors Services, Inc., Standard & Poor's Rating Group, or Fitch Ratings, respectively; provided, however, that a Below Investment Grade Security shall not include any security that is an Impaired Security;

(i) The term BlackRock means: BlackRock, Inc.;

(j) The term BlackRock Advisors means: BlackRock Investment Management, LLC and its Affiliates;

(k) The term Code means: The Internal Revenue Code of 1986, as amended;

(l) The term Crediting Rate means: The crediting rate described in sections II and IV that is used for purposes of determining the accrued interest to be added to the book value of an individual's account within RPT or the Separately Managed Accounts;

(m) The term Downgraded Security means: A Below Investment Grade Security that is held in the Type D1 Account and covered by the RPT Special Purpose Wrap Agreement;

(n) The term Global Buy and Hold Account means: The book account or sub-account maintained within RPT for purposes of identifying certain assets relating to the BANA RPT Buy and Hold Wrap Agreement;

(o) The term Global Wrap Account means: The book account or sub-account maintained within RPT for purposes of identifying certain assets relating to the BANA RPT Global Wrap Agreement;

(p) The term Hertz Plan means: The Hertz Corporation Income Savings Plan;

(q) The term Hertz Separately Managed Account means: The separately managed stable value account advised by BlackRock Advisors on behalf of the Hertz Plan;

(r) The term Impaired Security means:

(i) A security with respect to which the issuer or guarantor has failed to make one or more payments of principal or interest (after giving effect to any applicable grace period under the terms of such security or prescribed by any change in law, regulation, ruling or other governmental action); (ii) a security with respect to which the principal or interest has become due and payable before it otherwise would have been due or payable other than: (x) By reason of a call or other prepayment of such security made in accordance with its terms that does not constitute a default under such security, or (y) solely on account of any change in law, regulation, ruling or other governmental action; (iii) a security where the rate of interest thereon has been reset other than: (x) Pursuant to the original terms of such security, or (y) solely on account of any change in law, regulation, ruling or other governmental action; or (iv) a security with respect to which the issuer becomes insolvent or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights;

(s) The term Independent Fiduciary means an entity that is: (i) Experienced and knowledgeable in ERISA and the transactions and arrangements described herein; (ii) independent of and unrelated to BANA, Merrill, BlackRock, and their Affiliates; and (iii) appointed to act on behalf of Plans investing in RPT or the Separately Managed Accounts with respect to the matters described herein. The Independent Fiduciary will not be deemed to be independent of and unrelated to BANA, Merrill, BlackRock, and their Affiliates if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with BANA, Merrill, or BlackRock; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption other than for acting as an Independent Fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (iii) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from BANA, Merrill, BlackRock, and any of their Affiliates, exceeds five percent (5%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes), for its prior tax year;

(t) The term Minimum Ratio means: A ratio of 2.5 to 1.0 of market value of Permitted Securities to the total unamortized unrealized and realized losses with respect to Downgraded Securities;

(u) The term Permitted Securities means any security that: (i) Is a U.S. Treasury debenture, a security issued by the Government National Mortgage Association or a security guaranteed by the Federal Deposit Insurance Corporation; and (ii) has a modified duration on the date of purchase by RPT of 3.5 years or less;

(v) The term Plan means: An employee benefit plan within the meaning of and subject to Title I of the Act or an individual retirement account within the meaning of section 4975 of the Code;

(w) The term RPT means: The Merrill Lynch Retirement Preservation Trust maintained by the Trustee;

(x) The term RPT Special Purpose Wrap Agreement means: The agreement dated as of April 23, 2009, as amended, between BANA and the Trustee, pursuant to which BANA provides a book value benefit responsive facility

with respect to an undivided portion of the assets held in the Type D1 Account;

(y) The term RPT Stable Value Agreements means: The BANA RPT Global Wrap Agreement and the BANA RPT Buy and Hold Wrap Agreement;

(z) The term Separately Managed Accounts means: The Hertz Separately Managed Account and the Wal-Mart Separately Managed Account;

(aa) The term Separately Managed Account Wrap Agreements means: The BANA Wal-Mart Separately Managed Wrap Agreement and the BANA Hertz Separately Managed Wrap Agreement;

(bb) The term Type D1 Account means: The book account maintained within RPT for purposes of identifying Downgraded Securities, including unamortized losses with respect to Downgraded Securities that have been sold, and Permitted Securities covered by the RPT Special Purpose Wrap Agreement;

(cc) The term Tier 3 Wrap Provider means: A financial institution that has entered into a wrap agreement with respect to assets held in the Wal-Mart Separately Managed Account that will not be accessed for purposes of making benefit payments until after two tiers of buffer assets are accessed;

(dd) The term Trustee means: Bank of America, N.A.;

(ee) The term Wal-Mart Plan means: The Wal-Mart Profit Sharing and 401(k) Plan and the Wal-Mart Puerto Rico Profit Sharing and 401(k) Plan;

(ff) The term Wal-Mart Separately Managed Account means: The separately managed stable value account advised by BlackRock Advisors on behalf of the Wal-Mart Plan;

(gg) The term Merrill means: Merrill Lynch & Co., Inc. and its Affiliates;

(hh) The term RPT Wrap-Related Transaction means: (1) The determination, calculation of and adjustments to the Crediting Rate, and any changes to the Crediting Rate formula; (2) valuations of securities covered by the RPT Stable Value Agreements; (3) payment of wrap fees and any changes to wrap fees; (4) the purchase and sale of any security covered by the RPT Stable Value Agreements; (5) BANA's or the Trustee's exercise of its right to immunize or terminate the RPT Stable Value Agreements; (6) amendments to the RPT Stable Value Agreements; and (7) any other exercise by BANA, the Trustee, or BlackRock Advisors of their rights, or any performance by BANA, the Trustee, or BlackRock Advisors of their obligations, under the RPT Stable Value Agreements;

(ii) The term Special Purpose Wrap-Related Transaction means: (1) The

transfer of Below Investment Grade Securities to the Type D1 Account; (2) the sale or transfer of Downgraded Securities out of the Type D1 Account; (3) the purchase and sale of certain other securities permitted to be held in the Type D1 Account; (4) transactions relating to maintenance of a minimum ratio of Permitted Securities and Downgraded Securities; (5) the determination, calculation of and adjustments to the Type D1 Account Crediting Rate and any changes to the Type D1 Account Crediting Rate formula; (6) valuations of securities covered by the RPT Special Purpose Wrap Agreement; (7) payment of and any changes to wrap fees; (8) BANA's or the Trustee's exercise of its right to immunize or terminate the RPT Special Purpose Wrap Agreement; (9) the entering into and amendment of the RPT Special Purpose Wrap Agreement; and (10) any exercise by BANA, the Trustee, or BlackRock Advisors of their rights, or any performance by BANA, the Trustee, or BlackRock Advisors of their obligations, under the RPT Special Purpose Wrap Agreement;

(jj) The term Separately Managed Account Wrap-Related Transaction means: (1) The determination, calculation of and adjustments to the Crediting Rate, and any changes to the Crediting Rate formula; (2) valuations of securities covered by the Separately Managed Account Wrap Agreements; (3) payment of wrap fees and any changes to wrap fees; (4) the purchase and sale of any security covered by the Separately Managed Account Wrap Agreements; (5) BANA's or the Trustee's exercise of its right to terminate the Separately Managed Account Wrap Agreements; (6) amendments to the Separately Managed Account Wrap Agreements; and (7) any other exercise by BANA, the Trustee, or BlackRock Advisors of their rights, or any performance by BANA, the Trustee, or BlackRock of their obligations, under the Separately Managed Account Wrap Agreements.

Written Comment

The Department received one written comment letter, dated November 19, 2010, from Bank of America, N.A. (BANA), Merrill Lynch & Co., Inc. (Merrill Lynch) and BlackRock, Inc. (BlackRock) (collectively, the Applicants). In the letter, the Applicants made certain representations and/or requests regarding the preamble to the proposed exemption, and sections I(a) and (b), II(d), and III(h) of the proposed exemption. On August 18, 2011 and September 19, 2011, the Department received further correspondence from the Applicants, whereby the Applicants

provided an additional representation and made an additional request regarding section I(c) of the proposed exemption.

With respect to the preamble to the proposed exemption, the Applicants state that a clause was omitted from paragraph 47 of the Summary of Facts and Representations. In this regard, the Applicants represent that the first sentence of that paragraph should read as follows: "BANA will not receive a fee under either the BANA Wal-Mart Separately Managed Wrap Agreement or the BANA Hertz Separately Managed Wrap Agreement in excess of the maximum percentage fee received by any other Tier 3 Wrap Provider in the Wal-Mart Separately Managed Account, or in excess of the maximum percentage fee received by any other entity that has entered into a wrap agreement covering assets in the Hertz Separately Managed Account, as the case may be." The Department concurs with this comment.

With respect to section I(a) and (b) of the proposed exemption, the Applicants state that the RPT Stable Value Agreements and the RPT Special Purpose Wrap Agreement were terminated on October 6, 2010 and the relief set forth in section I(a) and (b) of the proposed exemption is not needed beyond October 7, 2010.⁴ The Applicants request that the relief contained in section I(a) and (b) of the final exemption expire on October 7, 2010.

Upon consideration of this request, the Department has determined that it would be appropriate to modify the proposed exemption as requested by the Applicants and, accordingly, the relief set forth in section I(a) and (b) of the final exemption expires on October 7, 2010.

With respect to section I(c) of the proposed exemption, the Applicants represent that Merrill Lynch's investment in BlackRock has diminished to the point where the relief described in section I(c) is not needed beyond April 8, 2011. The Applicants therefore request that the relief contained in section I(c) of the final exemption expire on April 8, 2011.

Upon consideration of this request, the Department has determined that it would be appropriate to modify the proposed exemption as requested by the Applicants and, accordingly, the relief set forth in section I(c) of the final exemption expires on April 8, 2011.

⁴ In the letter, the Applicants represented that, in connection with the change, Plan sponsors and participants and beneficiaries were to receive the book value of their investment and be permitted to transfer the proceeds to alternative investments.

With respect to the above-described modifications to section I, the Department notes that the exemption was proposed with the expectation that the relief provided by the exemption, if granted, would be on-going in nature. The proposed exemption therefore contains certain conditions applicable to section I(a) and (b) that expressly require the Applicants and/or the Independent Fiduciary to perform a specific action subsequent to October 7, 2010.⁵ Similarly, the proposed exemption contains a condition applicable to section I(c) that expressly requires the Applicants to perform a specific action subsequent to April 8, 2011.⁶ While these conditions have not been modified for purposes of this final exemption, such conditions do not remain in effect after: October 7, 2010 for conditions relating to the relief set forth in section I(a) or (b); or April 8, 2011 for conditions relating to the relief set forth in section I(c).

With respect to section II(d) of the proposed exemption, the Applicants request the removal of that condition's requirement that the Independent Fiduciary review the fees received by BANA in connection with the RPT Stable Value Agreements and the RPT Special Purposes Wrap Agreement. In this regard, the Applicants represent that such review is unnecessary due to: The limited time period for which exemptive relief is required (i.e., from January 1, 2009 to October 7, 2010); and the other fee restrictions contained in the proposed exemption.⁷ Upon consideration of this request, the Department has determined that it is appropriate to modify the proposed exemption in the manner requested by the Applicants and, accordingly, has revised section II(d) of the final exemption.

With respect to section III(h) of the proposed exemption, the Applicants request the removal of the second sentence of this condition. The subject sentence provides, in part, that "in no event shall the fee received by BANA under the BANA RPT Global Wrap Agreement or the BANA RPT Buy and Hold Wrap Agreement exceed the maximum percentage fee paid to any other financial institution pursuant to a wrap agreement covering assets in the applicable Global Wrap Account or the Global Buy and Hold Account, as relevant, as determined annually by the Independent Fiduciary." Upon

⁵ See, for example, paragraph I(1)(7) of section III.

⁶ See paragraph (d) of section V.

⁷ The Applicants represent that BANA is no longer receiving any fees with respect to the RPT Stable Value Agreements or the RPT Special Purpose Wrap Agreement.

consideration of this request, the Department has determined that it is appropriate to modify the proposed exemption in the manner requested by the Applicants and, accordingly, has revised section III(h) of the final exemption.

After full consideration and review of the entire record, including the written comment, the Department has determined to grant the exemption, as modified herein. The comment submitted by the Applicants to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on October 6, 2010 (75 FR 61932).

FOR FURTHER INFORMATION CONTACT:

Christopher Motta of the Department, telephone (202) 693-8544. (This is not a toll-free number.)

Pacific Capital Bancorp Amended and Restated Incentive and Investment and Salary Savings Plan (the Plan) Located in Santa Barbara, California

[Prohibited Transaction Exemption No. 2011-20; Exemption Application No. D-11659]

Exemption

Section I: Transactions

Effective October 27, 2010, the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,⁸ shall not apply:

(1) To the acquisition of certain rights (the Rights) by the Plan in connection with an offering (the Offering) of shares of the common stock (the Stock) in Pacific Capital Bancorp (Bancorp) by Bancorp, a party in interest with respect to the Plan, and

(2) To the holding of the Rights received by the Plan during the subscription period of the Offering; provided that the conditions as set forth

⁸ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

in section II of this exemption were satisfied for the duration of the acquisition and holding.

Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described, herein, and as set forth in the application file and upon compliance with the conditions, as set forth in this exemption.

(1) The receipt of the Rights by the Plan occurred in connection with the Offering and was made available by Bancorp on the same terms to all shareholders of the Stock of Bancorp;

(2) The acquisition of the Rights by the Plan resulted from an independent act of Bancorp, as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition of such Rights;

(3) Each shareholder of the Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Stock of Bancorp held by such shareholder;

(4) The Board of Directors of Bancorp decided that the Offering should be made available to all shareholders of the Stock, including the Plan, as record owner of the Stock held in the Plan on behalf of the accounts of the individual participants (the Invested Participants) all or a portion of whose accounts in the Plan are invested in the Stock, in accordance with provisions under such Plan for individually-directed investment of such accounts;

(5) The decision to exercise the Rights or to refrain from exercising the Rights was made by each of the Invested Participants in accordance with the provision under the Plan for individually-directed accounts; and

(6) No brokerage fees, commissions, subscription fees, or any other charges were paid by the Plan with respect to the Offering, and no brokerage fees, commissions, or other monies were paid by the Plan to any broker in connection with the exercise of the Rights.

DATES: Effective Date: This exemption is effective, October 27, 2010, the date the Plan acquired the Rights.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on June 13, 2011, at 76 FR 34266.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of September 2011.

Ivan Strasfeld,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 2011-24657 Filed 9-23-11; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security

Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D-11676 The Kemper Corporation Pension Plan (the Plan); L-11618 Oregon-Washington Carpenters Employers Apprenticeship and Training Trust Fund (the Plan); and L-11647 R+L Carriers Shared Services, LLC

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: moffitt.betty@dol.gov, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, N.W., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to

the comments or hearing requests received, as they are public records.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Kemper Corporation Pension Plan (the Plan) Located in Chicago, Illinois

Exemption Application Number D-11676

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).¹ If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D), and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason

¹ For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply, effective September 1, 2011, to the one-time, in-kind contribution (the Contribution) of shares of the common stock of Internec, Inc. (the Stock) to the Kemper Corporation Pension Plan (the Plan)² by the Kemper Corporation (Kemper or the Applicant), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The Applicant makes cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Stock at each contribution due date (determined under section 303(j) of the Act) are less than the cumulative cash contributions the Applicant would have been required to make to the Plan, in the absence of the Contribution. Such cash contributions shall be made until all of the Stock contributed to the Plan is sold;

(b) The Applicant contributes to the Plan such cash amounts as are needed for the Plan to attain an Adjusted Funding Target Attainment Percentage (AFTAP) of at least 80% as of January 1, 2012, as determined by the Plan's actuary (the Actuary), without taking into account any unsold Stock as of April 1, 2012;

(c) Solely for purposes of determining the Plan's minimum funding requirements, AFTAP and funding target attainment percentage, the Actuary will not count as a Plan asset any Stock that has not been liquidated as a contribution to the Plan;

(d) For purposes of determining Plan contribution amounts, the Stock shall be considered a contribution only at the time it is sold, with the contribution amount being the lesser of the proceeds from the sale of the Stock, or the value of the Stock on the date of the Contribution as determined by the Independent Fiduciary described below;

(e) The Stock represents no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan;

(f) The Plan pays no commissions, costs or other expenses in connection with the contribution, holding or subsequent sale of the Stock and any such expenses paid by the Applicant are not treated as a contribution to the Plan;

(g) The terms of the Contribution between the Plan and the Applicant are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated parties;

(h) Fiduciary Counselors Inc. (the Independent Fiduciary) represents the

² Prior to August 25, 2011, the Plan was known as the Unitrin, Inc. Pension Plan.

interests of the Plan, the participants and beneficiaries with respect to the Contribution;

(i) The Independent Fiduciary determines that the Contribution is in the interests of the Plan and of its participants and beneficiaries and is protective of the rights of participants and beneficiaries of the Plan; and

(j) The Independent Fiduciary monitors the transaction on a continuing basis and takes all appropriate actions to safeguard the interests of the Plan to ensure that the transaction remains in the interests of the Plan, and, if not, takes appropriate action available under the circumstances.

Effective Date: If granted, this proposed exemption will be effective as of September 1, 2011.

Summary of Facts and Representations

1. The Kemper Corporation³ (Kemper or the Applicant) is a diversified insurance holding company, with subsidiaries that principally provide life, automobile, homeowners and other insurance products for individuals. The Applicant reported total shareholders' equity of over \$2.1 billion as of June 30, 2011 and its debt is rated investment grade by S&P, Moody's and Fitch. The Applicant is the sponsor and named fiduciary of the Kemper Corporation Pension Plan (the Plan).

2. The Plan is a defined benefit pension plan that is tax-qualified under section 401(a) of the Code. As of January 1, 2011, the Plan had approximately 9,800 participants and beneficiaries. The fair market value of invested Plan assets as of June 30, 2011 was \$360.9 million. The Plan's independent actuary, AON Hewitt (the Actuary) has determined that the Plan's Adjusted Funding Target Attainment Percentage (AFTAP) as of January 1, 2011 is 80%.

3. The Kemper Corporation Master Retirement Trust (Master Trust)⁴ holds the assets of the Plan. The Plan's Investment Committee is the named fiduciary for Plan investments under the Master Trust. The Applicant serves as the Plan Administrator for the Plan. The Northern Trust Company serves as trustee of the Master Trust. The Investment Committee has the authority, under the terms of the Master Trust, to appoint one or more investment managers with respect to a portion or all of the Plan's assets.

4. The Applicant has requested exemptive relief from the Department

for the proposed one-time, in-kind contribution (the Contribution) of shares of the common stock of Intermed, Inc. (the Stock) to the Kemper Corporation Pension Plan (the Plan). The Contribution represents an in-kind contribution to the Plan from the Applicant, a party in interest, that would, in the absence of the exemption proposed herein, violate section 406(a)(1)(A) and (D) and section 406(b)(1) and (b)(2) of the Act.

5. All required minimum contributions for the 2011 Plan Year have been made to the Plan, except for a contribution in the amount of \$5,093,876, which is due on September 15, 2012. Thus, the Contribution is not needed to satisfy a required minimum contribution by September 15, 2011.⁵

6. The Applicant represents that the Contribution improves the benefit security of participants because it is substantially in excess of the contribution required for the 2011 Plan year and is being made one year in advance of the date the final contribution for the 2011 Plan year is due. To provide added protection to the Plan and its participants, the Applicant has agreed to make cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Stock at each contribution due date (determined under section 303(j) of the Act) are less than the cumulative cash contributions the Applicant would have been required to make to the Plan, in the absence of the Contribution. This commitment will remain in effect until all of the Stock contributed to the Plan has been sold.

7. Trinity Universal Insurance Company (Trinity), a wholly owned subsidiary of the Applicant, owns 7,661,607 shares of the Stock, with an approximate fair market value of \$56.47 million based upon the closing price of the Stock on August 31, 2011. The Applicant and its subsidiaries acquired the Stock on November 3, 1997 in connection with Western Atlas Inc.'s spin-off of Intermed, Inc. (formerly

known as UNOVA Inc.) to the shareholders of Western Atlas. Intermed, Inc. (Intermed) is a publicly traded company listed on the New York Stock Exchange under the symbol "IN." The Applicant proposes to acquire the Stock owned by Trinity and contribute it to the Plan. The Stock would represent approximately 13.5% of invested Plan assets (based on their fair market value as of June 30, 2011), on a pro forma basis, after taking into account the Contribution (based on the closing price of the Stock on August 31, 2011).

8. The Investment Committee has appointed Fiduciary Counselors Inc. as the Independent Fiduciary to represent the Plan in connection with the proposed transaction. The Independent Fiduciary is an investment adviser, within the meaning of the Investment Advisers Act of 1940, which primarily acts as an independent fiduciary for employee benefit plans, such as the Plan. Fiduciary Counselors Inc. has represented that it is qualified to assume these responsibilities and is independent of the Applicant and its affiliates. The Independent Fiduciary is responsible for determining whether and on what terms the Stock should be contributed to the Plan; reviewing and approving the process for liquidating the Stock as quickly as is prudent, subject to the limitations hereafter described and its fiduciary obligations; and voting proxies and responding to tender offers with respect to the Stock. The Independent Fiduciary has determined that the contribution of the Stock to the Plan is in the interests of the Plan and its participants. The Independent Fiduciary represents that the Contribution will significantly improve the funding of the Plan, and that the Contribution is significantly in excess of required minimum funding.

9. The Independent Fiduciary represents that Intermed is a global business that designs, develops, integrates sells and resells wired and wireless automated identification and data collection products and related services. As of July 3, 2011, Intermed's assets were \$870 million and liabilities totaled \$414 million. Intermed's debt-to-equity ratio is just 17%. Intermed's operating profit from continuing operations since 2009 has been at the breakeven point, excluding additional restructuring and acquisition costs.

10. The Stock is a marketable security that trades on the New York Stock Exchange. There are, however, limitations on how quickly the Stock can be liquidated because of Rule 144 of the Securities and Exchange Commission (Rule 144). Rule 144 limits the amount of Stock that the Applicant

³ Prior to August 25, 2011, Kemper was known as Unitrin, Inc.

⁴ Prior to August 25, 2011, the Master Trust was known as the Unitrin, Inc. Master Retirement Trust.

⁵ The Applicant is not required to make any cash contributions to the Plan for the 2011 Plan Year until September 15, 2012, because the Plan has satisfied the quarterly contribution requirements through offsetting such contributions against its credit balance. The minimum required contribution for the 2011 Plan Year is \$23,216,585, and the credit balances available to satisfy the minimum required contributions total \$18,627,878. The difference of \$4,588,707 is the amount of the required contribution due as of January 1, 2011, but, under section 303(j) of the Act, this amount is not required to be contributed to the Plan until September 15, 2012. However, if the amount is contributed after January 1, 2011, it must be increased by interest. Thus, the adjusted minimum required contribution as of September 15, 2012 is \$5,093,876.

and its affiliates may sell during any three-month period because the Applicant and its affiliates own more than 10% of Intermec's outstanding shares. The Applicant represents that after the Contribution, the Plan would be subject to Rule 144 because the Plan would own more than 10% of the outstanding stock of Intermec.⁶

Assuming that the current facts and circumstances and Rule 144 requirements remain in effect, the Applicant estimates that Rule 144 will limit the shares of Stock that may be sold by the Plan until early May, 2012. The Applicant further estimates that based upon the volume of Stock that the Applicant has been able to sell over the last several months, the Stock would likely be completely liquidated by the Plan by July, 2012.

10. The Independent Fiduciary has retained a valuation firm, Murray, Devine & Co., Inc., headquartered in Philadelphia, Pennsylvania, to advise it on whether a liquidity discount should be applied to the market value of the Stock. The Applicant has agreed to use the value of the Stock as determined by the Independent Fiduciary for the purpose of determining the amount of the Contribution for funding purposes.

11. The Applicant represents that the Contribution is administratively feasible, in the interests of the Plan, its participants and beneficiaries and would be protective of the Plan and its participants and beneficiaries. The Applicant believes that the Contribution is administratively feasible because it is a one-time only Contribution that would require no further action by the Department. Moreover, the Plan will pay no fees, commissions or costs with respect to the Contribution or the sale of the Stock by the Plan.

The Applicant states that the Contribution is in the interests of the participants and beneficiaries because the Contribution will increase the benefit security of the participants by adding assets to the Plan that are substantially in excess of the contribution amount under the minimum funding requirements. The in-kind Contribution is the stock of a well-established public company traded on the New York Stock Exchange so the Plan has a market to sell the Stock.

The Applicant believes that the Contribution is protective of the Plan and its participants and beneficiaries because an Independent Fiduciary has been appointed to represent the Plan, its participants and beneficiaries. Any potential downside to the Contribution

is addressed and effectively eliminated by:

(a) The Applicant's commitment to make additional cash contributions to the Plan if the cumulative proceeds from the sale of the Stock at each contribution due date are less than the cumulative minimum amounts that would otherwise have been contributed to the Plan in cash, until all of the Stock is sold;

(b) The Applicant's commitment to contribute such cash amounts as are needed for the Plan's AFTAP to be at least 80% as of January 1, 2012, without taking into account any unsold Stock as of April 1, 2012;⁷ and

(c) The Applicant's agreement to only count the Stock to the extent that it has been liquidated in determining the Plan's contributions, minimum funding requirements, the AFTAP and the funding target attainment percentage. This agreement means that the contribution of Stock serves as security for the obligation that the Applicant has to contribute cash to the Plan if the proceeds from sales of the Stock are not equal to what those cash contributions would have been.

12. In summary, the Applicant represents that the Contribution will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The Applicant will make cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Stock at each contribution due date (determined under section 303(j) of the Act) are less than the cumulative cash contributions the Applicant would have been required to make to the Plan, in the absence of the Contribution. Such cash contributions shall be made until all of the Stock contributed to the Plan is sold;

(b) The Applicant will contribute to the Plan such cash amounts as are

⁷ In determining the Plan's AFTAP, Kemper will only count Stock that has been liquidated as of April 1, 2012. This date is being used as a measurement for Stock sales because a determination must be made as of April 1, 2012 that the AFTAP is at least 80% to avoid the participants being subject to benefit restrictions. The Applicant represents that these benefit restrictions would affect a significant number of Plan participants. The Plan provides for elective lump sum distributions upon termination of employment for certain participants. The Applicant states that currently up to 650 participants would be entitled to a lump sum distribution upon termination of employment (excluding participants whose benefits have a value of \$5,000 or less and thus, would not be subject to benefit restrictions). In addition, certain participants have made employee contributions to the Plan which they are entitled to withdraw. If the benefit restrictions become applicable, the Plan's actuary estimates that approximately 92 participants would have the right to withdraw these contributions restricted.

needed for the Plan to attain an AFTAP of at least 80% as of January 1, 2012, as determined by the Actuary, without taking into account any unsold Stock as of April 1, 2012;

(c) For purposes of determining the Plan's minimum funding requirements, AFTAP and funding target attainment percentage, the Actuary will not count as a Plan asset any Stock that has not been liquidated as a contribution to the Plan;

(d) For purposes of determining Plan contribution amounts, the Stock shall be considered a contribution only at the time it is sold, with the contribution amount being the lesser of the proceeds from the sale of the Stock, or the value of the Stock on the date of the Contribution as determined by the Independent Fiduciary;

(e) The Stock will represent no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan;

(f) The Plan will pay no commissions, costs or other expenses in connection with the contribution, holding or subsequent sale of the Stock, and any such expenses paid by the Applicant will not be treated as a contribution to the Plan;

(g) The terms of the Contribution between the Plan and the Applicant will be no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated parties;

(h) An Independent Fiduciary will represent the interests of the Plan, the participants and beneficiaries with respect to the Contribution;

(i) The Independent Fiduciary will have determined that the Contribution is in the interests of the Plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Plan;

(j) The Independent Fiduciary intends to sell the Stock into the market as quickly as is prudent under the circumstances, subject to the limitations of SEC Rule 144 and the Independent Fiduciary's fiduciary responsibilities under ERISA; and

(k) The Independent Fiduciary will monitor the transaction on a continuing basis and take all appropriate actions to safeguard the interests of the Plan to ensure that the transaction remains in the interests of the Plan, and, if not, take any appropriate actions available under the circumstances.

Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons within 5 days of the publication of the notice of proposed exemption in the

⁶ See 17 CFR 230.144(a)(1)(iii).

Federal Register. The notice will be given to interested persons by first class mail or by return receipt requested electronic mail. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 35 days of the publication of the notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

Oregon-Washington Carpenters Employers Apprenticeship and Training Trust Fund (the Plan or the Applicant) Located in Portland, Oregon

[Application No. L-11618]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) and (D) of the Act, shall not apply to the sale by the Plan of certain unimproved real property known as "Tax Lot 300" and "Tax Lot 400" (together, the Tax Lots or the Property), to the Pacific Northwest Regional Council of Carpenters (the Union), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) At the time of the sale, the Plan receives the greater of either: (1) \$390,000; or (2) the fair market value of the Property as established by a qualified, independent appraiser in an updated appraisal of such Property on the date of the sale;

(c) The Plan pays no fees, commissions or other expenses associated with the sale;

(d) The terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party;

(e) The Plan trustees appointed by the Union (the Union Trustees) recuse themselves from discussions and voting with respect to the Plan's decision to enter into the proposed sale; and

(f) The Plan trustees appointed by the employer associations (the Employer Trustees), who have no interest in the proposed sale, (1) determine, among other things, whether it is in the best interest of the Plan to proceed with the sale of the Property; (2) review and approve the methodology used in the appraisal that is being relied upon; and (3) ensure that such methodology is applied by the qualified, independent appraiser in determining the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

The Parties

1. The Plan is a multiemployer, Taft-Hartley trust fund. The Plan was established on December 28, 1965, and is now maintained, pursuant to a Plan Agreement between the Oregon-Columbia Chapter; the Associated General Contractors of America, Inc.; the Associated Wall and Ceiling Contractors of Oregon and Southwest Washington, Inc.; the Home Builders Association of Metropolitan Portland; the General & Concrete Contractors Association, Inc. (collectively, the Employers); and the Union. As of February 28, 2011, the Plan had total assets of \$12,465,988.34. As of May 31, 2011, the Plan had approximately 4,122 participants.

2. The Plan is administered by a twelve member Board of Trustees, six of whom are appointed by the Employers and six of whom are appointed by the Union. The Trustees have ultimate fiduciary, operational, and investment discretion over the Plan's assets. The Plan's current Union Trustees are Gerald Auvil (Chairman of the Board of Trustees), Boyd Martin, Hank Mroczkowski, Ronald Robbins, Doug Tweedy, and Ben Embree. The Plan's current Employer Trustees are Jim McKune, Yasmine Branden, Jeff Herd, Gayland Looney (Secretary-Treasurer), Lonnie Kronsteiner, and Doug McClain.

Pursuant to the voting rules under the Plan Agreement and to avoid any self-dealing or conflict of interest issues, the Union Trustees are required to recuse themselves from discussions and voting with respect to the Plan's decision to enter into the proposed exemption transaction that is described herein.

3. The Plan is headquartered in Portland, Oregon. It was created to provide training and education to member apprentices and journeymen who are construction carpenters, acoustical applicators, boat builders, bridge carpenters, cabinet makers, divers, dock and wharf carpenters, floor layers, gypsum drywall and system

installers, insulation applicators, lathers, maintenance carpenters, millwright pile drivers, residential carpenters, scaffold erectors, and shipwright and tradeshow workers.

The Union is headquartered in Kent, Washington, and it was chartered on January 1, 1996. Its geographic jurisdiction covers the States of Washington, Oregon, Idaho, Montana, and Wyoming. According to the Applicant, the Union's mission and purpose, include but are not limited to, promoting and protecting the interests of its membership, encouraging the apprenticeship system and higher standards of skill, and securing adequate pay for its membership's work.

The Property Acquisition

4. On January 25, 2005, the Plan purchased the Property from an unrelated party, IBC Portland I, LLC of Evergreen, Colorado, in order to establish a training facility for its members. Prior to the acquisition, the Plan had been looking for a new training facility site and it had hired a commercial real estate consultant, Bruce J. Korter, CRE, Director, Real Estate for Washington Capital Management of Portland, Oregon, to assist the Board of Trustees with finding a suitable property. The Trustees had looked at many facilities and even considered purchasing a parcel of unimproved land on which to construct the training facility.

The original purchase price of \$4,200,000⁸ included the subject Property, Tax Lot 500 and a building situated on Tax Lot 500. The building serves as the Plan's principal training facility (the Training Center).⁹

The Property is located at NE 158th Avenue and NE Mason Street, Portland, Oregon. It consists of two parcels, Tax Lot 300, which is approximately 0.71 acres or 30,909 square feet of land, and Tax Lot 400, which is approximately 0.92 acres or 40,030 square feet of land. Adjacent to the Property are Tax Lot 500 and the Training Center, which are located at 4424 NE 158th Avenue, Portland, Oregon. Tax Lot 500 consists of approximately 4.64 acres or 202,118 square feet of land. Currently, the

⁸ As a result of negotiations, the seller later agreed to accept a \$100,000 reduction in the purchase price in exchange for several conditions of purchase, including paying for street improvements as they pertain to the property being purchased by the Plan. Thus, the modified purchase price was \$4,100,000. The final cost to the Plan was \$4,221,716.02, which included \$121,716.02 of additional charges, including \$94,351 for the 158th Ave. street improvements.

⁹ The Property, Tax Lot 500 and the Training Center are collectively referred to herein as the "Entire Property."

Property is vacant and does not produce any income. The Union owns no real estate that is within close proximity to the Entire Property.

The Plan financed the cost of the Training Center and Tax Lot 500 with a \$2,250,000, 20 year loan from AEGON USA Realty Advisors, Inc. (AEGON) of Cedar Rapids, Iowa, an unrelated party. The loan is secured by the Training Center and Tax Lot 500. It carries interest at the rate of 6.75% and requires monthly payments of \$16,564.13 that include both principal and interest, commencing March 2005. The Plan paid the remaining \$1,950,000 balance for the Training Center and Tax Lot 500 in cash.

Plan's Intentions Regarding the Property

5. According to the Applicant, the Plan had the seller divide the Entire Property into three separate tax lots prior to the purchase. This action was meant to facilitate the Plan's future sale of either or both Tax Lots 300 and 400, should a decision be made to dispose of these parcels, and not to have such property serve as security for the AEGON loan.

Also, according to the Applicant, the Plan's interest in the Entire Property prompted preliminary discussions about determining ways to finance the purchase. These discussions included the Union's purchase, from the seller, of one of the Tax Lots as a site for its new headquarters. In this regard, Mr. Korter, the real estate consultant, had suggested that the Plan apply for a loan for the Training Center, but not include the Property as security for such loan. Mr. Korter also suggested that the Union prepare a letter of intent to demonstrate its commitment to purchase one of the Tax Lots from the seller. However, no such letter of intent from the Union was ever forthcoming. (According to Jim McCune, an Employer Trustee, Mr. Korter believed the letter of intent was needed by the lender to approve the financing of the Entire Property.)

The Plan was able to sell the property at which its training facility was previously located for \$1 million. As a result, the Plan was able to obtain financing without needing to have the Union or an unrelated party purchase Tax Lot 300 or Tax Lot 400 from the seller.

Furthermore, the Applicant states that following the election of Doug Tweedy as the Union's Executive Secretary-Treasurer and CEO in August 2004, there was a complete changeover of

Union personnel. The Applicant explains that there was nothing in the Plan's records relating to the acquisition of the Entire Property to indicate that the Union's new executive personnel had any interest in the Tax Lots for the Union's headquarters. In this regard, the Applicant explains that some time before May 2005, the Union's executive personnel began searching for property other than the Tax Lots as its headquarters. On May 21, 2005, the Union committed to purchase and renovating a building located at 1636 East Burnside Street, Portland, Oregon (the East Burnside Property) by approving the financing. The Applicant notes that the Union has maintained its offices at the East Burnside Property ever since.

Thus, according to the Applicant, the possibility of the Union building its headquarters on the Property was not a consideration after the August 2004 election of Mr. Tweedy, which was well before the Entire Property was acquired by the Plan on January 25, 2005.

Plan's Use of the Property

6. Since the time of acquisition, the Plan has used the Property for training purposes, including surveying and building layout. The Applicant states that one of the ideas being considered for the use of Tax Lot 300 and Tax Lot 400 is to provide parking spaces for apprentices and Training Center employees so that the present south side parking lot can be used to expand the Training Center.

Plan's Acquisition and Holding Costs Regarding the Property

7. Because the Entire Property was listed for sale as a single parcel of land, the Applicant explains that there was no separate breakdown of the purchase price for Tax Lot 300, Tax Lot 400, Tax Lot 500, and the Training Center. In an appraisal report dated August 13, 2004 that was prepared on the Property for possible use as collateral for a federally-related loan transaction (see Representation 5), Tax Lot 300 was appraised at \$154,660, as of July 19, 2004. In that same appraisal report, Tax Lot 400 was appraised at \$200,155 as of July 19, 2004.¹⁰

¹⁰ In a separate appraisal report dated August 11, 2004, Mr. Hickok placed the fair market value of Tax Lot 500 and the Training Center at \$4,000,000, also as of July 19, 2004. As noted previously, the original purchase price included the Entire Property.

The appraisal was performed by Robert Hickok, MAI, MRICS, a qualified, independent appraiser affiliated with Integra Realty Resources, a real estate valuation and consulting firm located in Portland, Oregon. Mr. Hickok is also a Certified General Real Estate Appraiser and he is licensed in the States of Oregon and Washington. The Applicant represents that Mr. Hickok is a qualified, independent appraiser, and that less than 1% of his annual income is derived from the Applicant and its affiliates.

Thus, due to the absence of an actual purchase price for the Property, the Applicant has estimated this price to be \$147,760.06 for Tax Lot 300 and \$194,198.94 for Tax Lot 400, as of January 25, 2005 based on the allocation percentage the Tax Lot represented to the total appraised value of the Entire Property, as determined by Mr. Hickok in his July and August 2004 appraisals. The Applicant then applied each allocation percentage to the aggregate purchase price. Thus, the Plan's acquisition cost for the Property was \$341,959.¹¹

8. At the time of the purchase transaction, the Plan also paid half of the improvement costs on NE 158th Avenue, where the Property is located. The improvements that were made to NE 158th Avenue included the construction of curbs, gutters, and sidewalks, storm and sanitary sewers, water mains, and street pavement. Additionally, fire hydrants and trees were relocated and traffic control signage, pavement striping and marking, and permanent barricades were installed. The Plan's share of the improvement costs was approximately \$94,351.

Following the purchase transaction, the Plan has incurred maintenance costs associated with the Property and it has paid drainage taxes to Multnomah County, Oregon. Thus, the Plan's aggregate acquisition and holding costs incurred with respect to the Property between 2005 and 2010 is \$363,486.51.

A summary of the Plan's acquisition and holding costs as they relate to the Property for the period 2005-2010 is shown in the table below:

¹¹ Based on the Applicant's calculations, the acquisition costs for Tax Lot 300 and 400 were \$147,760.06 (3.5% of the \$154,600 appraised value) and \$194,198.94 (4.6% of the \$200,155 appraised value), respectively. The acquisition cost for Tax Lot 500 and the Training Center was \$3,879,757.02 (91.9% of the \$4,000,000 appraised value).

ACQUISITION AND HOLDING COSTS FOR TAX LOTS (TLs) 300 AND 400 FROM 2005-2010

Property expenses	2005	2006	2007	2008	2009	2010	TL 300 and TL 400 totals
TL 300 Acq. Cost *	\$147,760.06						\$147,760.06
TL 300 Maint. Costs **	1,352.58	1,352.58	1,352.58	1,352.58	1,352.58	1,352.58	8,115.48
TL 300 Taxes ***	253.01	211.33	221.93	234.20	237.26	253.28	1,411.01
TL 300 Totals	\$149,365.65	1,563.91	1,574.51	1,586.78	1,589.84	1,605.86	157,286.55
TL 400 Acq. Cost 111*	\$194,198.94						194,198.94
TL 400 Maint. Costs **	1,752.00	1,752.00	1,752.00	1,752.00	1,752.00	1,752.00	10,512.00
TL 400 Taxes ***	327.67	330.88	171.85	209.80	218.09	230.73	1,489.02
TL 400 Totals	\$196,278.61	2,082.88	1,923.85	1,961.80	1,970.09	1,982.73	206,199.96
TL 300 and TL 400 Totals ..	\$345,644.26	3,646.79	3,498.36	3,548.58	3,559.93	3,588.59	363,486.51

* *Maintenance Costs.* The maintenance costs of \$695/month were divided and allocated based on square footage of land (excluding the Training Center).

** *Taxes.* The 2005 through 2010 Multnomah County Property Tax assessments for Tax Lot 300 and Tax Lot 400 were used to calculate property taxes.

*** *Insurance Costs.* No insurance cost was allocated to Tax Lots 300 and 400 because, as explained by the Plan's insurance agent of record, Joseph P. Herrle, general liability insurance coverage extends automatically to any property that adjoins the Plan's business location (i.e., the Training Center Building) at no additional premium charge.

Request for Exemptive Relief

9. The Applicant requests an individual exemption from the Department in order to sell the Property to the Union. The Union's objective in buying the Property is to construct its Oregon and Southwest Washington headquarters building. The Applicant represents that the sale of the Property is in the best interest of the Plan and its participants because: (a) The Plan has no apparent or immediate need or use for the Property; and (b) the Plan does not derive any income from the Property. The sale of the Property will allow the Plan to convert the Property to cash and will permit the Plan to then invest the cash in a vehicle more appropriate to the Plan's investment needs and to meet its commitments that require liquidity. If the Union constructs its headquarters on the Property it would be a convenience to the participants receiving training and education as they are represented by the Union.

Efforts to Sell the Property to Unrelated Parties

10. The Applicant represents that it has not made efforts to sell the Property to unrelated third parties for the following reasons¹²:

¹² In the exemption application, the Applicant initially represented that the Trustees had not made any efforts to sell the Property to unrelated parties because at the time of the Plan's acquisition of the Entire Property, "the Trustees foresaw that the Property would be a good location to build the Union headquarters because of its proximity to the Training Center." As noted above, the Applicant provided further information to the Department to support the Trustees' actual intentions regarding the Property. Notwithstanding the supporting

- *Limited Use of the Property to Potential Purchasers.* According to the Applicant, Tax Lot 300 and Tax Lot 400 are zoned "IG2, General Industrial 2," which permits various industrial uses. Because the Tax Lots are both less than one acre in size, which is not customary for industrial neighborhoods, only atypical small industrial buildings could potentially be built on the Property. The Applicant explains that there is currently limited demand for additional industrial development. The Applicant also explains that Mr. Hickok, the independent appraiser, determined that industrial use of the Property was not considered financially feasible because a newly-developed use would not have a value commensurate with its cost. Since the Property is not appropriate for most industrial uses, the Applicant states that this limits the number of potential buyers and would likely result in a lower sale price for an industrial use other than the Union's office building use. Further, the Applicant indicates that there are currently four larger industrial buildings that remain unsold to the east of the Training Center and undeveloped land to the south of the Training Center.

documentation, the Department is still concerned that the Applicant's statement raises issues under the general standards of fiduciary conduct of section 404 of the Act and the prohibited transaction provisions of 406 of the Act with respect to the Plan's acquisition and holding of the Property. Accordingly, the Department is not passing on the prudence of the Plan's investment in the Property, nor is it providing exemptive relief herein from section 406 of the Act for any prohibited transactions that may have occurred during the Plan's acquisition and holding of such Property.

- *Inability of an Unrelated Purchaser to Receive Municipal Construction Approval or Have a Use Ancillary to the Training Center.* According to the Applicant, an unrelated purchaser would not likely receive approval from the City of Portland to construct an office building on the Property. However, the Applicant believes that the Union would receive such approval because it represents the Plan participants being trained in the Training Center. In addition, the Applicant states that it is not expected that an unrelated purchaser's use of the Property would be ancillary to the Training Center as the Union's potential use.

- *Cash Flow Problems Experienced by the Plan.* The Applicant states that the Plan had a reduced cash flow in 2008 and 2009 due to the recession. As a result, there had been fewer jobs for carpenters and fewer contributions to the Plan. The Applicant explains that the need for apprentice and journeymen training has increased as labor agreements have increased their training requirements. The Applicant further explains that the Trustees recognized that Union headquarters building would be a complimentary and nonintrusive use to the Training Center and a convenience to the Plan participants receiving training, as they are represented by the Union. After Mr. Hickok completed his 2009 appraisal of Property, the Applicant indicates that the Union commenced the process involved to purchase the Property from the Plan, following approval by the Employer Trustees of filing an

exemption application with the Department.

• *Use of the Property that Does Not Impair the Training Center or the Safety of the Apprentices.* Due to the proximity of the Property to the Training Center, the Applicant states that the Trustees must ensure that the Property is used in a manner that will not hinder the use, and the view of the Training Center from NE 158th Avenue. Additionally, the Applicant notes that because the apprentices are mainly young adults, the Trustees desire that the Property be used in a manner that does not compromise the safety of the apprentices or create liability issues for the Plan and the Training Center.

Recent Appraisals of the Property

11. The Property was appraised by Mr. Hickok who, as noted in Representation 7, had initially valued the Property in 2004. Using the Sales Comparison Approach to valuation, Mr. Hickok placed the fair market value of Tax Lot 300 at \$170,000 as of October 20, 2009 in an appraisal report dated November 12, 2009. In that same appraisal report, Mr. Hickok placed the fair market value of Tax Lot 400 at \$220,000, for a combined total appraised value of \$390,000 for the Property. Mr. Hickok explains that the Sales Comparison Approach to valuation was the only approach available for the valuation of the Property. The Cost Approach was not available because there are no improvements that contribute to the value of the Property. Mr. Hickok concluded that the Income Approach was not available because the Property is not likely to generate rental income in its current state.

12. The Department requested a 1–2 page addendum to the 2009 appraisal asking Mr. Hickok whether there had been a change in the fair market value of the Property since the date of the 2009 appraisal. On April 18, 2011, the Applicant's representative submitted a summary appraisal report, effective March 22, 2011. Using the Sales Comparison Approach to valuation in the updated appraisal, Mr. Hickok again placed the fair market value of Tax Lot 300 at \$170,000, and Tax Lot 400 at \$220,000. Thus, the Property had a combined total appraised value of \$390,000 as of March 22, 2011.

Conditions of the Proposed Sale

13. The Plan will pay no real estate commissions or other expenses associated with the sale. The Union will pay the Plan in cash, the greater of either: (a) \$390,000 or (b) the fair market value of the Property, as established by

a qualified, independent appraiser on the date of the transaction, as reflected in an updated appraisal of such Property.

14. The Employer Trustees have determined, among other things, that it is in the best interest of the Plan to proceed with the sale of the Property. In addition, the Trustees have reviewed and approved the methodology used in the appraisal that is being relied upon, and they will ensure that such methodology is applied by the qualified independent appraiser in determining the fair market value of the Property on the date of the sale.

Summary

15. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale will be a one-time transaction for cash;

(b) At the time of the sale, the Plan will receive the greater of either: (1) \$390,000; or (2) the fair market value of the Property as established by a qualified, independent appraiser in an updated appraisal of such Property on the date of the sale;

(c) The Plan will pay no fees, commissions or other expenses associated with the sale;

(d) The terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party;

(e) The Union Trustees will recuse themselves from discussions and voting with respect to the Plan's decision to enter into the proposed sale; and

(f) The Employer Trustees, who have no interest in the proposed sale will (1) determine, among other things, whether it is in the best interest of the Plan to proceed with the sale of the Property; (2) review and approve the methodology used in the appraisal that is being relied upon; and (3) ensure that such methodology is applied by the qualified, independent appraiser in determining the fair market value of the Property on the date of the sale.

Notice to Interested Persons

Notice of the proposed exemption will be provided to the Employers and the Union within 15 days of the publication of the notice of proposed exemption in the **Federal Register**. The Plan will provide notice to interested persons by first-class mail. Such notice will contain a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement as required pursuant to 29 CFR 2570.43(b)(2). The supplemental

statement will inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemptions. Written comments and hearing requests are due within 45 days of the publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department at (202) 693–8556. (This is not a toll-free number).

**R+L Carriers Shared Services, LLC,
Located in Wilmington, Ohio**

[Application No. L-11647]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks, and receipt of premiums related therefrom, by Royal Assurance, Inc. (Royal Assurance), in connection with insurance contracts sold by Unum Life Insurance Company of America (Unum), or any successor insurance company to Unum which is unrelated, to the R+L Carriers Shared Services, LLC to provide group life, short-term disability (STD), long-term disability (LTD), and Accidental Death and Dismemberment (AD&D) insurance benefits to employees of the R+L Companies¹³ under an employee welfare benefit plan (the Plan)¹⁴ sponsored by the R+L Carriers

¹³ The individual related employers comprising the R+L Companies are: (1) R+L Carriers Shared Services, LLC; (2) Strategic Management, LLC; (3) Paramount Transportation Logistics Services, LLC; (4) R+L Carriers Payroll, LLC; (5) Paramount Labor Leasing Southern, LLC; (6) Paramount Labor Leasing Eastern, LLC; (7) Paramount Labor Leasing Southern, LLC; (8) Golden Ocala Management, Inc.; (9) Royal Resorts, LLC; (10) ABCO Transportation, Inc.; (11) Spirit Express Trucking, Inc.; (12) Royal Shell Property Management, Inc.; (13) Quality Quest Linen Service, Inc.; (14) Royal Shell Vacations, Inc.; (15) AFC LS, LLC; and (16) AFC Worldwide Express, Inc. The foregoing employers, along with the captive insurer, Royal Assurance, constitute the applicants requesting an individual exemption for the proposed transaction described herein.

¹⁴ The applicants represent that Mr. Ralph "Larry" Roberts, Sr., the founder of the R+L Companies, is the owner (either directly, or indirectly through the combined voting interests of his spouse and his children) of 50 percent or more of the combined voting power of all classes of stock entitled to vote of each of the employers constituting the R+L Companies whose employees are covered under the Plan. Therefore, according to the applicants, Mr. Roberts is a party in interest with respect to the Plan for purposes of section 3(14)(E) of the Act. The applicants further represent

Continued

Shared Services, LLC, provided the following conditions are met:

- (a) Royal Assurance—
- (1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with R+L Carriers Shared Services LLC that is described in section 3(14)(E) or (G) of the Act;
 - (2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;
 - (3) Has obtained a Certificate of Authority from the Director of the Department of Insurance of its domiciliary state which has neither been revoked nor suspended;
 - (4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or (B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Arizona) by the Director of the Arizona Department of Insurance within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and
 - (5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;
- (b) The Plan pays no more than adequate consideration for the insurance contracts;
- (c) No commissions are paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof;
- (d) In the initial year of any contract involving Royal Assurance, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;
- (e) In subsequent years, the formula used to calculate premiums by Unum or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under

that Mr. Roberts is the owner, either directly or indirectly, of 50 percent or more of the combined voting power of all classes of stock entitled to vote of the captive, Royal Assurance; accordingly, the applicants represent that Royal Assurance is a party in interest with respect to the Plan for purposes of section 3(14)(G) of the Act. In this regard, the Department is providing no opinion herein as to whether Mr. Roberts is a party in interest with respect to the Plan for purposes of section 3(14)(E) of the Act; similarly, the Department is providing no opinion herein as to whether Royal Assurance is a party in interest with respect to the Plan for purposes of section 3(14)(G) of the Act.

similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plan only contracts with insurers with a financial strength rating of "A" or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the insurer and Royal Assurance will be indemnity insurance only, i.e., the insurer will not be relieved of liability to the Plan should Royal Assurance be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) The Plan retains an independent fiduciary to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been satisfied. For purposes of the proposed exemption, the independent fiduciary is a person who:

- (1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with an applicant (this relationship hereinafter referred to as an affiliate);
- (2) Is not an officer, director, employee of, or partner in, Royal Assurance or any other applicant (or an affiliate of either);
- (3) Is not a corporation or partnership in which Royal Assurance or any other applicant has an ownership interest or is a partner;
- (4) Does not have an ownership interest in Royal Assurance, or any of the other applicants, or their Affiliates;
- (5) Is not a fiduciary with respect to the Plan prior to the appointment; and
- (6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "independent fiduciary," no organization or individual may serve as an independent fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Royal Assurance, any other applicant, or their affiliates (including amounts received for services as independent fiduciary under any prohibited transaction exception granted by the Department) for that fiscal year exceeds one percent of that organization or individual's annual

gross income from all sources for the prior fiscal year.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Royal Assurance, any other applicant, or their affiliates during the period that such organization or individual serves as independent fiduciary, and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiates any such transaction during the period that such organization or individual serves as independent fiduciary.

Summary of Facts and Representations

1. The R+L Companies comprise a group of enterprises, primarily focused on the trucking and transportation services industries, that are under common ownership. The R+L Companies are a major nationwide interstate motor carrier network providing "less-than-truckload" transportation services, i.e., partial-load shipments to one or more destinations, or full trailer-load shipments directed to multiple destinations. Today, the R+L Companies have approximately 9,000 employees with operations extending to all 50 states, Canada, Puerto Rico and the Dominican Republic.

2. Royal Assurance is a captive insurance company that was established for the purpose of insuring or reinsuring certain risks associated with the business operations of the R+L Companies, and that shares common ownership with the R+L Companies. The applicants represent that Royal Assurance has insured the R+L Companies' property and casualty risks, and also reinsured the employee benefit plans of the R+L Companies. The applicants further state that Royal Assurance was incorporated in Arizona on August 13, 2008. On December 3, 2008, the Director of the Arizona Department of Insurance granted Royal Assurance a Certificate of Authority to transact the business of a captive insurance company in the State of Arizona. The Certificate of Authority grants Royal Assurance the authority to transact the following kinds of insurance business within the State of Arizona: Casualty, Workers' Compensation, Property, Life Reinsurance, and Disability Reinsurance.

3. The independent certified public accounting firm of Saslow Lufkin &

Buggy, LLP has served as Royal Assurance's auditor since its incorporation. Saslow Lufkin & Buggy, LLP currently examines Royal Assurance's reserves on an annual basis in connection with the employee benefit business to be reinsured by Royal Assurance to ensure that appropriate reserve levels are maintained. The applicants represent that, as of December 31, 2009 (the most recent date for which audited financial statements from Saslow Lufkin & Buggy, LLP are available), Royal Assurance disclosed approximately \$335,719 in gross annual premiums and \$1,349,327 in total assets (audited financial statements for Royal Assurance for calendar year 2010, according to the applicants, are not yet available).

4. The R+L Carriers Shared Services, LLC Plan (the Plan) is maintained for employees of the R+L Companies. The Plan provides both basic and supplemental life and disability coverage. The Plan has historically insured with the Unum Life Insurance Company of America ("Unum"). However, pursuant to the transaction for which an exemption is being sought, Royal Assurance would now be utilized for the reinsurance of benefits and would make substantial improvements to the Plan in anticipation of that transaction.

5. Specifically, the new benefits (at no additional cost or obligation to the participants) are as follows:

(a) **Accidental Death and Dismemberment Benefit**—Upon grant of the exemption, the Plan would provide a completely new \$10,000 AD&D benefit, in addition to the basic benefits that are currently available under the existing life insurance and disability coverages. The AD&D enhancement would pay the full \$10,000 amount in the event of accidental death, in addition to the basic life insurance benefit and any additional life insurance benefit options selected by the participant. The new AD&D benefit would pay an enhanced benefit in accordance with a predetermined schedule for automobile-related deaths occurring while seatbelts and/or air bags are in use. Moreover, the new AD&D benefit would include a schedule of education benefits for qualified children in the event a Plan participant dies as a result of an accidental injury. Such benefits are in addition to any life insurance benefit that may be available. The new AD&D enhancement would also operate alongside any benefits that would otherwise be available under the Plan's existing LTD and/or STD coverages. Specifically, the AD&D enhancement would pay the full

\$10,000 amount in the event of grievous injury involving loss of both hands, both feet, or both eyes. The full \$10,000 amount would also be payable in the event of the loss of two different appendages or organs, e.g., loss of a hand and a foot. One-half of the new benefit would be paid if a single organ or appendage were lost. These enhanced benefits would be available in addition to any available benefits under the LTD or STD coverages;

(b) **Short-Term Disability Benefit**—Under this benefit enhancement, the current \$150 maximum weekly benefit amount (under "Option A" of the STD program) would be increased to \$175. Neither the amount of STD benefits, nor eligibility for such benefits, will be restricted or reduced as a result of this new enhancement;

(c) **Long-Term Disability Accelerated Death Benefit**—The LTD benefit under the Plan will be enhanced by providing a new, previously unavailable, accelerated survivorship benefit to the beneficiaries of LTD-eligible employees. Under this benefit improvement, when an employee on LTD has a life expectancy of 6 months or less, the employee's beneficiaries will be eligible to receive a benefit payment equal to the LTD program's death benefit, i.e., 3 months of LTD benefit payments;

(d) **LTD Child Care Expense Benefit**—Employees eligible for LTD benefits would be entitled to additional child care benefits under the LTD program. The enhanced expense allowance would be increased from the current level of \$250 per month to \$350 per month;

(e) **LTD Dependent/Elder Care Benefit**—The enhanced LTD program would include additional benefits to cover the personal care costs of non-child dependents (e.g., elderly parents) during the period of the employee's disability. The enhanced expense allowance would be increased from the current level of \$250 per month to \$350 per month; and

(f) **LTD Worksite Modification Benefit**—The enhanced LTD program would include a provision for an increase in the worksite modification benefit to \$1,500 from the current \$1,000 amount. The worksite modification benefit will defray the cost of workplace modifications that can enable a disabled employee to remain at work or return to work.

6. The Plan's life and disability benefits are now insured by Unum, which currently has an "A" rating from A. M. Best. The applicants represent that if the Plan chooses another insurer in the future, that insurer will have a financial strength rating of "A" or better from A. M. Best. The applicants

anticipate that, upon the granting of the exemption proposed herein, Unum will enter into reinsurance agreements with Royal Assurance.

Unum will continue to insure the Plan, with the enhanced new benefits. However, Unum will reinsure up to 100% of the risk with Royal Assurance. The percentage of the risk to be insured will be specified in the reinsurance agreements between Unum and Royal Assurance. The reinsurance agreements between Unum and Royal Assurance will be indemnity reinsurance only, so that Unum will not be relieved of its liability to the Plan should Royal Assurance be unwilling or unable to cover any liability arising from the reinsurance arrangement.

The Plan will pay no more than adequate consideration for the insurance contracts with Unum or any successor insurer. The formula used to calculate premiums by Unum or any successor insurer¹⁵ will be similar to formulae used by other insurers providing life insurance coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer providing coverage under the Plan and its competitors with the same or a better rating providing the same coverage under comparable programs.

7. In connection with this exemption request, Milliman, Inc. (Milliman) has been engaged as the independent fiduciary (Independent Fiduciary) on behalf of the Plan. Milliman is an international firm of consultants and actuaries with expertise in all facets of employee benefits, including insurance. William J. Thompson, FSA, MAAA (Mr. Thompson), a Principal and Consulting Actuary employed by Milliman, has represented Milliman for purposes of making the Independent Fiduciary representations. Milliman's consultants are frequently retained to advise corporations on the insurance arrangements underlying their benefit programs and have considerable expertise in the area of reinsurance and captive insurers.

8. For purposes of demonstrating independence, the Independent Fiduciary has represented that:

(a) It is not an Affiliate of Unum, Royal Assurance, or any of the other applicants;

(b) Neither the Independent Fiduciary nor Mr. Thompson is an officer,

¹⁵ The applicants state that any successor insurer would be a legal reserve life insurance company with assets of such a size as to afford similar protection and responsibility.

director, employee of, or partner in Unum, Royal Assurance, or any of the other applicants;

(c) The Independent Fiduciary is not a corporation in which Unum, Royal Assurance, or any of the other applicants, has an ownership interest or is a partner;

(d) The Independent Fiduciary does not have an ownership interest in Royal Assurance, any of the other applicants, or Unum, or in any Affiliate of those firms;

(e) The Independent Fiduciary was not a fiduciary with respect to the Plan prior to its appointment for this transaction;

(f) The Independent Fiduciary has acknowledged in writing its acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect their fiduciary duty;

(g) The gross income received by the Independent Fiduciary and Mr. Thompson (both separately and combined) from Royal Assurance, the other applicants, Unum, or their Affiliates (including amounts received for services as Independent Fiduciary for representing the interests of the Plan with respect to the exemption transaction, for monitoring compliance with the terms and conditions of any administrative exemption granted by the Department, and for taking whatever actions may be necessary and appropriate to safeguard the interests of the Plan and its participants and beneficiaries), does not exceed one percent of the gross annual income of the Independent Fiduciary from all sources for the prior fiscal year; and

(h) The Independent Fiduciary did not acquire any property from, sell property to, or borrow funds from, Royal Assurance, any of the other applicants, Unum, or their Affiliates.

9. The Independent Fiduciary represents that Royal Assurance is licensed in the State of Arizona since December 3, 2008 to reinsure life and disability insurance business. The Independent Fiduciary confirmed that Royal Assurance has undergone an examination by Saslow Lufkin & Buggy, LLP, an independent certified public accountant, for its 2008 taxable year. The Independent Fiduciary reviewed their audited financial report and is satisfied that there are no issues to be resolved. In addition, the Independent Fiduciary had an opportunity to review the unaudited financial statements of Royal Assurance for the 2009 taxable year, and found no evidence to contradict the view that the unaudited statements present fairly, in all material

respects, the financial position of Royal Assurance as of December 31, 2009. The Independent Fiduciary further represents that future reserves will be reviewed by a qualified independent actuary approved by the State of Arizona.

10. The Independent Fiduciary has concluded that, as a result of the reinsurance agreement described in representation 6, above, the Plan's risks will be 100% covered by Unum, a carrier with a current rating of "A" by A. M. Best, even if Royal Assurance were unable or unwilling to cover the Plans' liabilities it is assuming as a result of the reinsurance agreement. The Independent Fiduciary represents that it has reviewed the terms of the proposed reinsurance agreement between Unum and Royal Assurance, and has concurred that the agreement provides that Royal Assurance's risk would revert back to Unum at no further cost to the Plan should Royal Assurance be unable or unwilling to pay the benefits.

11. The Independent Fiduciary has represented that it reviewed the Plan's benefits before the reinsurance transaction and the benefits to be implemented following the reinsurance transaction. After conducting this review, the Independent Fiduciary concluded that there would be an immediate benefit, in the form of the various benefit enhancements set forth above in Representation 5, to the Plan's participants from the reinsurance transaction. In reaching its conclusion, the Independent Fiduciary notes, inter alia, that the R+L Companies have represented that the benefit enhancements described in Representation 5 would be provided at no additional cost or obligation to employees covered by the Plan, and would cover all employees affected by the proposed transaction.

12. The Independent Fiduciary has made the following representations concerning the determination of the initial premium to the Plan under the proposed arrangement. It concluded that the Plan is paying no more than adequate consideration for the Unum life and disability insurance contracts. In reaching this conclusion, the Independent Fiduciary noted that the current rates have been in place since 1998 for the disability program, and 2003 for the life program. As such, the Plan has accepted these rate levels as reasonable for several years, and the rates will not be increased upon implementation of the reinsurance transaction even though the benefits will be enhanced. The Independent Fiduciary reviewed documentation of historical claims and premium

experience, as well as the current rate table. The Independent-Fiduciary has stated that the retention being charged by the fronting carriers produces anticipated loss ratios for the life and disability business that are within typical marketplace levels for larger groups. The Independent Fiduciary also noted that, if full credibility was given to the life and disability experience of the R+L Companies, and using the carrier's anticipated loss ratios, the premium rates in recent years would be lower than the rates being charged. However, the Independent Fiduciary stated that, in its opinion, there is enough volatility in the life and LTD experience that the credibility being assigned to the business as a whole is reasonable.

13. The current Independent Fiduciary, Milliman, will represent the interests of the Plan as the independent fiduciary at all times,¹⁶ will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plan and of its participants and beneficiaries.

14. The applicants represent that the proposed reinsurance transaction will meet the following conditions of PTE 79-41 covering direct insurance transactions:

(a) The applicants represent that Mr. Roberts is the owner, either directly or indirectly, of 50 percent or more of the combined voting power of all classes of stock entitled to vote of the captive, Royal Assurance; accordingly, the applicants represent that Royal Assurance is a party in interest with respect to the Plan for purposes of section 3(14)(G) of the Act;

(b) Royal Assurance is licensed to conduct reinsurance transactions by the State of Arizona. The law under which Royal Assurance is licensed requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(c) Royal Assurance has undergone an examination by the independent certified public accountant firm of Saslow Lufkin & Buggy, LLP for its last completed taxable year;

¹⁶ In this regard, the applicants make the following representation regarding a successor independent fiduciary. Specifically, should it become necessary in the future to appoint a successor independent fiduciary to replace Milliman and Mr. Thompson, the Applicants will notify the Department sixty (60) days in advance of the appointment of the successor fiduciary. Any such successor will have the responsibilities, experience and independence similar to those of Milliman and Mr. Thompson.

(d) Royal Assurance has received a Certificate of Authority from its domiciliary state (Arizona), which has neither been revoked nor suspended;

(e) The Plan will pay no more than adequate consideration for the insurance. In addition, in the initial year of the proposed reinsurance transaction, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits; and

(f) No commissions will be paid by the Plan with respect to the reinsurance arrangement with Royal Assurance, as described herein.

In addition, the Plan's interests will be represented by a qualified, Independent Fiduciary (i.e., Milliman or its successor), who has initially determined that the proposed reinsurance transactions will be in the interest of, and protective of, the Plan and its participants and beneficiaries. The Independent Fiduciary will also confirm on an annual basis that the Plan is paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plan with comparable claims experience.

15. In summary, the applicants represent that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act because:

(a) The Plan's participants and beneficiaries are afforded insurance protection by Unum, a carrier with a current rating of "A" from A. M. Best, at competitive market rates arrived at through arm's length negotiations;

(b) Unum will enter into a reinsurance agreement with Royal Assurance, a sound, viable insurance company which has been in business since 2008;

(c) The protections described in Representation 14, above, provided to the Plan and its participants and beneficiaries under the proposed reinsurance transactions are based on those required for direct insurance by a "captive" insurer, under the conditions of PTE 79-41 (notwithstanding certain other requirements related to, among other things, the amount of gross premiums or annuity considerations received from customers who are not related to, or affiliated with the insurer);¹⁷

¹⁷ The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act apply to the fiduciary's decision to engage in the reinsurance arrangement. Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to

(d) The Independent Fiduciary has reviewed the proposed reinsurance transaction and has determined that the transaction is appropriate for, and in the interests of, the Plan and that there will be an immediate benefit to the Plan's participants as a result thereof by reason of an improvement in benefits under the terms of the Plan; and

(e) The Independent Fiduciary will monitor compliance by the parties with the terms and conditions of the exemption, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

Notice To Interested Persons: A copy of this Notice of Proposed Exemption (the Notice) shall be provided to all interested persons via first-class mail within thirty (30) days of the date of publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due no later than sixty (60) days after publication of the Notice in the **Federal Register**.

For Further Information Contact: Mr. Gary Lefkowitz of the Department at (202) 693-8546. This is not a toll-free number.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does

participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular insurance or investment product, strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular product or arrangement must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular product or arrangement involved, including the plan's potential exposure to losses and the role a particular insurance or investment product plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a-1).

it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of August 2011.

Ivan Strasfeld,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 2011-24656 Filed 9-23-11; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Withdrawal of Proposed Exemption From Certain Prohibited Transaction Restrictions

In the **Federal Register** dated May 5, 2011 (76 FR 25719), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice concerned an application, D-11639, filed on behalf of Wolverine Bronze Company Profit Sharing Plan and Trust (the Plan) and BDR Oil, LLC located in Roseville, Michigan, involving the proposed sale, for cash at fair market value, of a note receivable and royalty interests

(ORRIs)—collectively, the Alternative Investments, by the Plan to BDR Oil, LLC, an entity owned by three officers/employees of the Plan.

On May 19, 2011, the Department was informed by a representative of the Applicant that BDR Oil, LLC no longer intended to purchase the Alternative Investments from the Plan. Accordingly, on its own motion, the Department hereby withdraws the foregoing notice of proposed exemption.

Signed at Washington, DC, this 19th day of August, 2011.

Ivan L. Strasfeld,

*Director, Office of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 2011-24530 Filed 9-23-11; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice11-084]

NASA Advisory Council; Science Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-462, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, October 31, 8:30 a.m. to 4 p.m., Local Time, and Tuesday, November 1, 2011, 8:30 a.m. to 2 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 3H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-4452, fax (202) 358-1377, or mnorris@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888-989-4491, pass code Science Committee, to participate in

this meeting by telephone. The WebEx link is <https://nasa.webex.com/>, meeting number on October 31 is 993 667 684, and password *Science@Oct31*; the meeting number on November 1 is 994 724 148, and password *.Science@Nov1*. The agenda for the meeting includes the following topics: —Program and Subcommittee Updates. —James Webb Space Telescope Program Replan.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or resident alien card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; home address; driver's license number and state of issue; and Social Security number to Marian Norris via e-mail at mnorris@nasa.gov or by fax at (202) 358-1377. U.S. citizens are requested to submit their name and affiliation 3 working days prior to the meeting to Marian Norris.

Dated: September 20, 2011.

P. Diane Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 2011-24684 Filed 9-23-11; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records

schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 26, 2011. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740-6001.

E-mail: request.schedule@nara.gov.

Fax: 301-837-3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT:

Laurence Brewer, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. *Telephone:* 301-837-1539. *E-mail:* records.mgt@nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and

authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Grain Inspection, Packers, and Stockyards Administration (N1-545-08-11, 21 items, 20 temporary items). Records of the Official Services Division, including general correspondence; interim and draft reports; records of testing services and evaluations performed for outside

entities such as weighing, inspection, and reinspection; training records; and records created in calibrating scales and other measures. Proposed for permanent retention are final reports for collaborative studies.

2. Department of Agriculture, Grain Inspection, Packers, and Stockyards Administration (N1-545-11-4, 1 item, 1 temporary item). Master files of an electronic information system used to track and manage workflow in administering inspection, weighing, certification, and testing services.

3. Department of Agriculture, Risk Management Agency (N1-258-08-12, 4 items, 3 temporary items). Records containing information on establishing price rates for individual crops and other general actuarial documentation. Proposed for permanent retention are records related to program creation and establishment of actuarial rates and insurance offers.

4. Department of the Army, Agency-wide (N1-AU-10-26, 1 item, 1 temporary item). Master files of electronic information systems containing information relating to recreation and non-appropriated fund programs, including property management, banking and investment, event planning, library management, and financial planning files.

5. Department of the Army, Agency-wide (N1-AU-10-29, 1 item, 1 temporary item). Master files of an electronic information system containing biometric information used to issue identification badges to access U.S. military bases abroad.

6. Department of the Army, Agency-wide (N1-AU-10-35, 1 item, 1 temporary item). Master files of an electronic information system containing information on military construction projects.

7. Department of the Army, Agency-wide (N1-AU-10-40, 1 item, 1 temporary item). Master files of an electronic information system used for construction project quality management and contract administration.

8. Department of the Army, Agency-wide (N1-AU-10-47, 2 items, 2 temporary items). Master files of an electronic information system used to automate maintenance operations. Included are equipment records, repair parts documentation, labor costs, and work orders requests.

9. Department of the Army, Agency-wide (N1-AU-10-53, 1 item, 1 temporary item). Master files of an electronic information system containing information about projected acquisitions projects.

10. Department of the Army, Agency-wide (N1-AU-10-56, 1 item, 1 temporary item). Master files of an electronic information system containing information relating to repair requests.

11. Department of Commerce, National Oceanic and Atmospheric Administration (N1-370-11-4, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to capture and display positional data on vessels and their location for fisheries management purposes.

12. Department of Health and Human Services, Agency for Healthcare Research and Quality (N1-510-09-6, 6 items, 3 temporary items). Master files of an electronic information system containing ad-hoc survey data on the quality of patient care and culture of safety in healthcare facilities. Also includes non-significant reports and publications. Proposed for permanent retention are master files of a related, larger system containing survey data on health plans, safety, and patient care, as well as significant reports and publications including aggregate data from both systems.

13. Department of Health and Human Services, Food and Drug Administration (N1-88-11-1, 1 item, 1 temporary item). Letters certifying use of digital signatures by firms submitting electronic regulatory submissions.

14. Department of Transportation, Federal Railroad Administration (N1-399-08-8, 5 items, 3 temporary items). Master files of an electronic information system containing information used to process and track railroad violation case files, such as tracking details, attorney notes, penalty information, violation proof, and railroad information. Also included are monthly enforcement and civil penalty case reports. Proposed for permanent retention are the Annual Civil Penalty report and the Annual Enforcement report.

Dated: September 20, 2011.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2011-24772 Filed 9-23-11; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby

given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending time is approximate):

Arts Education (application review):

October 24–26, 2011 in Room 627.
This meeting, from 9 a.m. to 6 p.m. on October 24th and 25th, and from 9 a.m. to 4:30 p.m. on October 26th, will be closed.

Musical Theater (application review):

October 24–25, 2011 in Room 714.
This meeting, from 9 a.m. to 6 p.m. on October 24th and from 9 a.m. to 3 p.m. on October 25th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2011, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: September 21, 2011.

Kathy Plowitz-Worden,

*Panel Coordinator, Panel Operations,
National Endowment for the Arts.*

[FR Doc. 2011-24596 Filed 9-23-11; 8:45 am]

BILLING CODE 7537-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC-2011-0099]

Agency Information Collection Activities; Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on June 6, 2011.

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:* NRC Form 354, "Data Report on Spouse."
3. *Current OMB approval number:* OMB 3150-0026.
4. *The form number if applicable:* NRC Form 354.
5. *How often the collection is required:* On Occasion.
6. *Who will be required or asked to report:* NRC contractors, licensees, applicants, and other (e.g. intervenor's) who marry or cohabitate after completing the Personnel Security Forms, or after having been granted an NRC access authorization or employment clearance.
7. *An estimate of the number of annual responses:* 80.
8. *The estimated number of annual respondents:* 80.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 16 hours.
10. *Abstract:* NRC Form 354 must be completed by NRC contractors, licensees, applicants who marry or cohabitate after completing the Personnel Security Forms, or after having been granted an NRC access authorization or employment clearance. Form 354 identifies the respondent, the marriage, and data on the spouse and spouse's parents. This information permits the NRC to make initial security determinations and to assure there is no

increased risk to the common defense and security.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 26, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date:

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150-0026), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to CWhiteman@omb.eop.gov or submitted by telephone at 202-395-4718.

The NRC Clearance Officer is Tremaine Donnell, 301-415-6258.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of September, 2011.

Tremaine Donnell,
NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011-24663 Filed 9-23-11; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2011-0224]

Draft Regulatory Guide; Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Draft Regulatory Guide, DG-8050, "Applications of Bioassay for Radioiodine."

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG-8050, "Applications of Bioassay for Radioiodine." This regulatory guide provides criteria and methods acceptable to the staff of the NRC for the development and implementation of personnel monitoring and bioassay programs for any licensee handling or

processing unsealed materials containing iodine-125 (¹²⁵I), iodine-131 (¹³¹I), or a combination of the two. It also provides guidance on the selection of workers who should participate in such a bioassay program to detect and measure possible exposure. The guide does not address measurement techniques and procedures.

DATES: Submit comments by November 22, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: Please include Docket ID NRC-2011-0224 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2011-0224. Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.

- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

- *Fax comments to:* RADB at 301-492-3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their

comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- **NRC's Public Document Room (PDR):** The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. DG-1278 is available electronically under ADAMS Accession No. ML102800439. The regulatory analysis is available electronically under ADAMS Accession Number ML102800445.

- **Federal Rulemaking Web site:** Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2011-0224.

FOR FURTHER INFORMATION CONTACT: R. A. Jervey, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-251-7404 or e-mail Richard.Jervej@nrc.gov.

The NRC is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Applications of Bioassay for Radioiodine," is temporarily identified by its task number, DG-8050, which should be mentioned in all related correspondence. DG-8050 is proposed Revision 2 of Regulatory Guide 8.20, dated September 1979.

This regulatory guide provides criteria and methods acceptable to the staff of

the NRC for the development and implementation of personal monitoring and bioassay programs for any licensee handling or processing unsealed materials containing iodine-125 (¹²⁵I), iodine-131 (¹³¹I), or a combination of the two. It also provides guidance on the selection of workers who should participate in such a bioassay program to detect and measure possible exposure. The guide does not address measurement techniques and procedures.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 16th day of September, 2011.

Robert G. Carpenter,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011-24615 Filed 9-23-11; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on October 6-8, 2011, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 21, 2010 (75 FR 65038-65039).

Thursday, October 6, 2011, Conference Room T2-B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.-8:35 a.m.: Opening

Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.-10:00 A.M.: Draft Final Revision 4 to Regulatory Guide (RG) 1.82, "Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Draft Final Revision 4 to RG 1.82.

10:15 a.m.-11:45 a.m.: Fuel Cycle Oversight Process (FCOP) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding staff's findings, conclusions, and recommendations regarding risk-informing the FCOP.

12:45 p.m.-2:15 p.m.: Future ACRS Activities/Report of the Planning and

Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [Note: A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

2:15 p.m.–2:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

2:45 p.m.–3:15 p.m.: Draft Report on the Biennial ACRS Review of the NRC Safety Research Program (Open)—The Committee will hold a discussion on the draft report on the biennial ACRS review of the NRC Safety Research Program.

3:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Friday, October 7, 2011, Conference Room T2-B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: NRC Staff Recommendations on the Near-Term Task Force Report Regarding the Events at the Fukushima Dai-ichi Site in Japan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's recommendations on the Near-Term Task Force Report regarding the events at the Fukushima Dai-ichi site in Japan.

10:15 a.m.–11:45 a.m.: Development of Draft Fire Human Reliability Analysis (HRA) Guidelines—NUREG 1921 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the HRA guidelines in NUREG 1921.

12:45 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Saturday, October 8, 2011, Conference Room T2-B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Ms. Ilka Berrios, Cognizant ACRS Staff (Telephone: 301–415–3179, e-mail: Ilka.Berrios@nrc.gov), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. 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 Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at pdr.resource@nrc.gov, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document

system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> or <http://www.nrc.gov/reading-rm/doc-collections/ACRS/>.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

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: September 20, 2011.

Andrew L. Bates,
Advisory Committee Management Officer.

[FR Doc. 2011–24612 Filed 9–23–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

DATES: Time and Date: Wednesday, October 5, 2011, at 11 a.m.

PLACE: Commission Hearing Room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open session will be audiocast. The audiocast may be accessed via the Commission's Web site at <http://www.prc.gov>.

MATTERS TO BE CONSIDERED: The agenda for the Commission's October 2011 meeting includes the items identified below.

PORTIONS OPEN TO THE PUBLIC:

1. Report on the joint USPS/PRC Periodicals study.
2. Review of the peak load study.
3. Report on international activities.
4. Report on post office closing appeals.
5. Status of mail classification schedule.
6. Report on pending dockets.

- 7. Report on legislative activities.
- 8. Status of Commissioner vacancies.

PORTION CLOSED TO THE PUBLIC:

- 9. Discussion of pending litigation.

FOR FURTHER INFORMATION CONTACT:

Contact Person for Information: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268-0001, at 202-789-6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary of the Commission, at 202-789-6800 or shoshana.grove@prc.gov (for inquiries related to meeting location, access for handicapped or disabled persons, the audiocast, or similar matters). By the Commission.

Dated: September 21, 2011.

Shoshana M. Grove,
Secretary.

[FR Doc. 2011-24708 Filed 9-22-11; 11:15 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. A2011-74; Order No. 861]

Post Office Closing

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Coyote, New Mexico post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* September 30, 2011; *deadline for notices to intervene:* October 17, 2011. See the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at <https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820 (case-related information) or DocketAdmins@prc.gov (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 15, 2011, the Commission received a petition for review of the Postal Service's determination to close the Coyote post office in Coyote, New Mexico. The petition was filed by Manuelita Trujillo on behalf of the Concerned Citizens of the Coyote Post Office (Petitioner) and was received by the Commission on September 12, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011-74 to consider Petitioner's appeal. If Petitioner would like to further explain its position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 20, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. See 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 30, 2011. See 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 30, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at <http://www.prc.gov>. Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202-789-6873 or via electronic mail at prc-webmaster@prc.gov.

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at prc-dockets@prc.gov or via telephone at 202-789-6846.

Filing of documents. All filings of documents in this case shall be made

using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, <http://www.prc.gov>, unless a waiver is obtained. See 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at prc-dockets@prc.gov or via telephone at 202-789-6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. See 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 17, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. See 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. See 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. See 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 30, 2011.
2. Any responsive pleading by the Postal Service to this Notice is due no later than September 30, 2011.
3. The procedural schedule listed below is hereby adopted.
4. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is designated officer of the Commission (Public Representative) to represent the interests of the general public.
5. The Secretary shall arrange for publication of this Notice and Order in the **Federal Register**.

By the Commission,
Shoshana M. Grove,
Secretary.

PROCEDURAL SCHEDULE

September 15, 2011	Filing of Appeal.
September 30, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 30, 2011	Deadline for the Postal Service to file any responsive pleading.
October 17, 2011	Deadline for notices to intervene (<i>see</i> 39 CFR 3001.111(b)).
October 20, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (<i>see</i> 39 CFR 3001.115(a) and (b)).
November 9, 2011	Deadline for answering brief in support of the Postal Service (<i>see</i> 39 CFR 3001.115(c)).
November 25, 2011	Deadline for reply briefs in response to answering briefs (<i>see</i> 39 CFR 3001.115(d)).
December 2, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (<i>see</i> 39 CFR 3001.116).
January 10, 2012	Expiration of the Commission's 120-day decisional schedule (<i>see</i> 39 U.S.C. 404(d)(5)).

[FR Doc. 2011-24565 Filed 9-23-11; 8:45 am]
BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. A2011-75; Order No. 862]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ellisburg, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* September 30 2011 *deadline for notices to intervene:* October 17, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at <https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820 (case-related information) or DocketAdmins@prc.gov (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 15, 2011, the Commission received a petition for review of the Postal Service's determination to close the Ellisburg post office in Ellisburg, New York. The petition was filed by Winford J. Smith

(Petitioner) and is postmarked September 9, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011-75 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 20, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 30, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 30, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at <http://www.prc.gov>. Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202-789-6873 or via electronic mail at prc-webmaster@prc.gov.

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at [\[dockets@prc.gov\]\(mailto:dockets@prc.gov\) or via telephone at 202-789-6846.](mailto:prc-</p>
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Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, <http://www.prc.gov>, unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at prc-dockets@prc.gov or via telephone at 202-789-6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 17, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 30, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than September 30, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Malin Moench is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission,
Shoshana M. Grove,
Secretary.

PROCEDURAL SCHEDULE

September 15, 2011	Filing of Appeal.
September 30, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 30, 2011	Deadline for the Postal Service to file any responsive pleading.
October 17, 2011	Deadline for notices to intervene (<i>see</i> 39 CFR 3001.111(b)).
October 20, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (<i>see</i> 39 CFR 3001.115(a) and (b)).
November 9, 2011	Deadline for answering brief in support of the Postal Service (<i>see</i> 39 CFR 3001.115(c)).
November 25, 2011	Deadline for reply briefs in response to answering briefs (<i>see</i> 39 CFR 3001.115(d)).
December 2, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (<i>see</i> 39 CFR 3001.116).
January 9, 2012	Expiration of the Commission's 120-day decisional schedule (<i>see</i> 39 U.S.C. 404(d)(5)).

[FR Doc. 2011-24566 Filed 9-23-11; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. A2011-76; Order No. 863]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Templeville, Maryland post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* September 30, 2011; *deadline for notices to intervene:* October 17, 2011. See the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at <https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820 (case-related information) or DocketAdmins@prc.gov (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 15, 2011, the Commission received a petition for review of the Postal Service's determination to close the Ellisburg post office in Ellisburg, New York. The petition was filed by Winford J. Smith (Petitioner) and is postmarked September 9, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011-75 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 20, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. See 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 30, 2011. See 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 30, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at <http://www.prc.gov>. Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid

protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202-789-6873 or via electronic mail at prc-webmaster@prc.gov.

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at prc-dockets@prc.gov or via telephone at 202-789-6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, <http://www.prc.gov>, unless a waiver is obtained. See 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at prc-dockets@prc.gov or via telephone at 202-789-6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. See 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 17, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. See 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its

decision within 120 days from the date it receives the appeal. See 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses

are due 7 days after any such motion is filed. See 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 30, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than September 30, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Malin Moench is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this Notice and Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,
Secretary.

PROCEDURAL SCHEDULE

September 15, 2011	Filing of Appeal.
September 30, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 30, 2011	Deadline for the Postal Service to file any responsive pleading.
October 17 2011	Deadline for notices to intervene (see 39 CFR 3001.111(b)).
October 20, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (see 39 CFR 3001.115(a) and (b)).
November 9, 2011	Deadline for answering brief in support of the Postal Service (see 39 CFR 3001.115(c)).
November 25, 2011	Deadline for reply briefs in response to answering briefs (see 39 CFR 3001.115(d)).
December 2, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
January 9, 2012	Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(d)(5)).

[FR Doc. 2011-24568 Filed 9-23-11; 8:45 am]

BILLING CODE 7710-FW-P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 6, 2011, 10 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

PORTION OPEN TO THE PUBLIC:

(1) Executive Committee Reports.

PORTION CLOSED TO THE PUBLIC:

(A) Vacant General Counsel Position.

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312-751-4920.

Dated: September 21, 2011.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2011-24770 Filed 9-22-11; 11:15 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 17a-5(c); SEC File No. 270-199; OMB Control No. 3235-0199.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17a-5(c) (17 CFR 240.17a-5(c)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a-5(c) generally requires broker-dealers who carry customer accounts to provide statements of the broker-dealer's financial condition to their customers. Paragraph (5) of Rule 17a-5(c) provides a conditional exemption from this requirement. A broker-dealer that elects to take advantage of the exemption must publish its statements on its Web site in a prescribed manner, and must maintain a toll-free number that customers can call to request a copy of the statements.

The purpose of the Rule is to ensure that customers of broker-dealers are provided with information concerning the financial condition of the firm that may be holding the customers' cash and securities. The Commission, when adopting the Rule in 1972, stated that the goal was to "directly" send a customer essential information so that the customer could "judge whether his broker or dealer is financially sound." The Commission adopted the Rule in response to the failure of several broker-

dealers holding customer funds and securities in the period between 1968 and 1971.

The Commission estimates that approximately 244 broker-dealer respondents carrying approximately 101 million public customer accounts incur an average burden of 128,000 hours per year to comply with the Rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-

Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: September 20, 2011.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-24585 Filed 9-23-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29794; File No. 812-13855]

Curian Series Trust and Curian Capital, LLC; Notice of Application

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

SUMMARY: The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Curian Series Trust ("Trust") and Curian Capital, LLC (the "Adviser").

DATES: Filing Dates: The application was filed on December 30, 2010, and amended on June 7, 2011 and September 16, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 14, 2011 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants, Curian Series Trust, 7601 Technology Way, Denver, CO 80237.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel at (202) 551-6870, or Jennifer L. Sawin, Branch

Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Trust is currently comprised of three separate series, Curian/PIMCO Total Return Fund, Curian/PIMCO Income Fund, and Curian/WMC International Equity Fund (the "Initial Funds"), each with its own distinct investment objectives, policies and restrictions.¹ Each Initial Fund currently employs an unaffiliated subadviser (each, a "Subadviser").

2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser serves as investment adviser to each Initial Fund under an investment advisory agreement ("Advisory Agreement") with the Trust. An Adviser will also serve as the investment adviser to any future Funds. Each Initial Fund's Advisory Agreement was approved by the Trust's board of trustees ("Board"), including a majority of trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust, the Adviser, or the Subadvisers ("Independent Trustees") and by that Fund's shareholders.

3. Under the terms of the Advisory Agreement, and subject to the authority of the Board, the Adviser is responsible for the overall management of the Initial

¹ Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser or its successors (included in the term "Adviser"); (b) uses the manager of managers structure described in the application ("Manager of Managers Structure"); and (c) complies with the terms and conditions of the application (together with the Initial Funds, the "Funds"). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser will precede the name of the Subadviser. For purposes of the requested order, "successor" is limited to any entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

Funds' business affairs and selecting the Initial Funds' investments in accordance with each Fund's investment objectives, policies and restrictions. For the investment advisory services that it provides to the Initial Funds, the Adviser receives the fee specified in the Advisory Agreement from each Fund. Under the Advisory Agreement, the Adviser may retain one or more subadvisers for the purpose of managing the investment of the assets of the Funds. Pursuant to this authority, the Adviser has entered into investment subadvisory agreements ("Subadvisory Agreements") with two Subadvisers to provide investment advisory services to the Initial Funds. Each Subadviser is and each future Subadviser will be registered as an investment adviser under the Advisers Act. The Adviser will obtain for the Funds the services of one or more Subadvisers, evaluate and allocate assets to, and oversee the Subadvisers, and make recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. The Subadvisers are expected to be compensated directly by each Fund.²

4. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or the Adviser (other than by reason of serving as a subadviser to one or more of the Funds) ("Affiliated Subadviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if and

² It is possible that, in the future, a Subadviser to a Fund may be compensated by the Adviser out of the advisory fees the Adviser receives from the Fund.

to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the shareholders rely on the Adviser's experience to select one or more Subadvisers best suited to achieve the Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of the individual portfolio managers employed by the Adviser for Fund assets managed by the Adviser. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose costs and unnecessary delays on the Funds and may preclude the Adviser and the Board from acting promptly when a change in Subadvisers would benefit a Fund. Applicants note that each Advisory Agreement and any subadvisory agreement with an Affiliated Subadviser will remain subject to the shareholder approval requirements of section 15(a) and rule 18f-2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and to recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of a new Subadviser, shareholders of the affected Fund will be furnished all information about the new Subadviser

that would be included in a proxy statement. To meet this condition, each affected Fund will provide shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to the review and approval by the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or part of each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or the Fund, or director, manager or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. For Funds that pay subadvisory fees directly from Fund assets, any

changes to a Subadvisory Agreement that would result in an increase in the total management and advisory fees payable by a Fund will be required to be approved by the shareholders of that Fund.

10. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: September 19, 2011.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-24590 Filed 9-23-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29793; 812-13866]

ASGI Agility Income Fund, et al.; Notice of Application

September 19, 2011.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and service fees and contingent deferred sales loads ("CDSCs").

APPLICANTS: ASGI Agility Income Fund ("Agility Fund"), ASGI Aurora Opportunities Fund, LLC ("Aurora Fund"), and ASGI Corbin Multi-Strategy Fund, LLC ("Corbin Fund") (each a "Fund" and collectively, the "Funds"), Alternative Strategies Group, Inc. (the "Adviser") and Alternative Strategies Brokerage Services, Inc. (the "Placement Agent").

FILING DATES: The application was filed on February 8, 2011, and amended on June 24, 2011 and September 16, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving

applicants with a copy of the request, personally or by mail.

Hearing requests should be received by the Commission by 5:30 p.m. on October 14, 2011, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, c/o Lloyd Lipsett, Esq., Wells Fargo Law Department, 200 Berkeley Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-6811 or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations:

1. Each Fund is a continuously offered non-diversified closed-end management investment company registered under the Act. The Agility Fund is organized as a Delaware statutory trust. The Aurora Fund and the Corbin Fund are each organized as a Delaware limited liability company. The Adviser serves as investment adviser to each Fund. The Placement Agent, a broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act"), acts as principal underwriter for the Funds. The Placement Agent is under common control with the Adviser and is an affiliated person, as defined in section 2(a)(3) of the Act, of the Adviser.

2. Each Fund continuously offers its shares ("Shares") in private placements in reliance on the provisions of Regulation D under the Securities Act of 1933. The Shares are not offered or traded in a secondary market and are not listed on any securities exchange or quoted on any quotation medium. Applicants do not expect that any secondary market will ever develop for the Shares.

3. Each Fund currently offers an initial class of Shares ("Initial Class") at

net asset value and proposes to offer multiple classes of Shares. Each Fund may offer a new Share class at net asset value and may also charge a front-end sales load and an annual service and/or distribution fee. The Funds intend to continue to offer Initial Class Shares at net asset value without a sales load, subject to minimum purchase requirements. The Funds may in the future offer additional classes of shares and/or another sales charge structure. The Funds do not plan to offer exchange privileges.

4. In order to provide a limited degree of liquidity to Shareholders, the Funds may from time to time offer to repurchase Shares at net asset value in accordance with rule 13e-4 under the 1934 Act pursuant to written tenders by Shareholders ("Repurchases").¹ A Fund will Repurchase Shares at the times, in the amounts and on the terms as may be determined by the Board of Trustees ("Board") of the Fund in its sole discretion. The Adviser expects to recommend ordinarily that the Board authorize each Fund to offer to Repurchase Shares from Shareholders quarterly.

5. Applicants request that the order also apply to any other continuously offered registered closed-end management investment companies existing now or in the future for which the Adviser, the Placement Agent, or any entity controlling, controlled by or under common control with the Adviser or the Placement Agent acts as investment adviser or principal underwriter, and which provides periodic liquidity with respect to its Shares pursuant to rule 13e-4 under the 1934 Act (such investment companies, together with the Funds, the "Funds").²

6. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD Conduct Rule 2830").³ Applicants also represent that

¹ Shares are subject to a repurchase fee if the interval between the date of initial purchase and the valuation date with respect to the Repurchase of such Shares under the tender offer is, with respect to the Agility Fund and the Aurora Fund, less than one year, and, with respect to the Corbin Fund, less than 180 days. To the extent the Funds determine to waive, impose scheduled variations of, or eliminate a repurchase fee, each Fund will do it consistent with the requirements of Rule 22d-1 under the Act as if the repurchase fee were a CDSC and apply any such change uniformly to all Shareholders of the Fund.

² Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that any person presently intending to rely on the requested relief is listed as an applicant.

³ All references to NASD Conduct Rule 2830 include any successor or replacement rule that may

each Fund will disclose in its private placement memorandum, the fees, expenses and other characteristics of each class of Shares offered for sale by the memorandum as is required for open-end multiple class funds under Form N-1A. Each Fund will disclose fund expenses in shareholder reports as if it were an open-end management investment company, and disclose any arrangements that result in breakpoints in, or elimination of, sales loads in its private placement memorandum.⁴ Each Fund and the Placement Agent will also comply with any requirements that may be adopted by the Commission or FINRA regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund and the Placement Agent.⁵

7. Each Fund will allocate all expenses incurred by it among the various classes of Shares based on the respective net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of Shares will be borne on a pro rata basis by each outstanding Share of that class. Applicants state that each Fund will comply with the provisions of rule 18f-3 under the Act as if it were an open-end investment company.

8. Each Fund may waive the CDSC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of

be adopted by the Financial Industry Regulatory Authority ("FINRA").

⁴ See Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

⁵ Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Adopt NASD Rule 2830 as FINRA Rule 2341 (Investment Company Securities) in Consolidated FINRA Rulebook, Securities Exchange Act Release No. 64386 (May 3, 2011); Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) (proposing release).

the CDSC, each Fund will comply with rule 22d-1 under the Act as if the Fund were an open-end investment company.

Applicants' Legal Analysis:

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Shares of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its Shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act.

CDSCs

1. Applicants believe that the requested relief meets the standards of section 6(c) of the Act. Rule 6c-10 under the Act permits open-end investment companies to impose

CDSCs, subject to certain conditions. Applicants state that the CDSCs may be necessary for the Placement Agent to recover distribution costs. Applicants state that any CDSC imposed by the Funds will comply with rule 6c-10 under the Act as if the rule were applicable to closed-end investment companies. The Funds also will disclose CDSCs in accordance with the requirements of Form N-1A concerning CDSCs as if the Funds were open-end investment companies. Applicants further state that the Funds will apply the CDSC (and any waivers or scheduled variations of the CDSC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d-1 under the Act.

Asset-Based Service and/or Distribution Fees

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to permit the Funds to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies.

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition: Each Fund will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3 and 22d-1 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with the NASD

Conduct Rule 2830, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-24589 Filed 9-23-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29791; File No. 812-13867]

Stone Harbor Emerging Markets Income Fund, et al.; Notice of Application

September 16, 2011.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as monthly in any one taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

Applicants: Stone Harbor Emerging Markets Income Fund (the "Current Fund") and Stone Harbor Investment Partners LP ("Stone Harbor" or the "Adviser").

Filing Dates: The application was filed on February 9, 2011 and amended on May 27, 2011 and September 13, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 11, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be

notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, 31 West 52nd Street, 16th Floor, New York, New York 10019, Contact: Adam J. Shapiro, Esq.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 551-6815, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

Applicants' Representations:

1. The Current Fund is a closed-end management investment company registered under the Act and is organized as a Massachusetts business trust.¹ The Current Fund's investment objective is total return, consisting of income and capital appreciation. The common shares of the Current Fund are listed on the New York Stock Exchange. The Current Fund currently does not intend to issue any shares of preferred stock, but may do so in the future. Applicants believe that investors in the common shares of the Current Fund may prefer an investment vehicle that provides regular/monthly distributions and a steady cash flow.

2. Stone Harbor, a registered investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act"), acts as the Current Fund's investment adviser. Each future Investment Adviser to a

Fund will be registered under the Advisers Act.

3. Applicants state that, prior to a Fund's implementing a distribution plan in reliance on the order, the board of trustees (the "Board") of the Fund, including a majority of the trustees who are not "interested persons," of such Fund as defined in section 2(a)(19) of the Act (the "Independent Trustees"), shall have requested, and the Adviser shall have provided, such information as is reasonably necessary to make an informed determination of whether the Board should adopt a proposed distribution policy. In particular, the Board and the Independent Trustees shall have reviewed information regarding the purpose and terms of a proposed distribution policy, the likely effects of such policy on such Fund's long-term total return (in relation to market price and its net asset value per common share ("NAV")) and the relationship between such Fund's distribution rate on its common shares under the policy and such Fund's total return (in relation to NAV); whether the rate of distribution would exceed such Fund's expected total return in relation to its NAV; and any foreseeable material effects of such policy on such Fund's long-term total return (in relation to market price and NAV). The Independent Trustees shall also have considered what conflicts of interest the Adviser and the affiliated persons of the Adviser and each such Fund might have with respect to the adoption or implementation of such policy. Applicants state that, only after considering such information shall the Board, including the Independent Trustees, of a Fund approve a distribution policy with respect to such Fund's common shares (the "Plan") and in connection with such approval shall have determined that such Plan is consistent with a Fund's investment objectives and in the best interests of a Fund's common shareholders.

4. Applicants state that the purpose of a Plan would be to permit a Fund to distribute over the course of each year, through periodic distributions as nearly equal as practicable and any required special distributions, an amount closely approximating the total taxable income of such Fund during such year and, if so determined by its Board, all or a portion of the return of capital paid by portfolio companies to such Fund during such year. It is anticipated that under the Plan of a Fund, such Fund would distribute to its respective common shareholders a fixed monthly percentage of the market price of such Fund's common shares at a particular point in time or a fixed monthly

percentage of NAV at a particular time or a fixed monthly amount, any of which may be adjusted from time to time. It is anticipated that under a Plan, the minimum annual distribution rate with respect to such Fund's common shares would be independent of a Fund's performance during any particular period but would be expected to correlate with a Fund's performance over time. Except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of a Fund's performance for an entire calendar year and to enable a Fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code ("Code") for the fiscal year, it is anticipated that each distribution on the common shares would be at the stated rate then in effect.

5. Applicants state that prior to the implementation of a Plan for a Fund, the Board shall have adopted policies and procedures under rule 38a-1 under the Act that: (i) Are reasonably designed to ensure that all notices required to be sent to the Fund's shareholders pursuant to section 19(a) of the Act, rule 19a-1 thereunder and condition 4 below (each a "19(a) Notice") include the disclosure required by rule 19a-1 under the Act and by condition 2(a) below, and that all other written communications by the Fund or its agents regarding distributions under the Plan include the disclosure required by condition 3(a) below; and (ii) require the Fund to keep records that demonstrate its compliance with all of the conditions of the order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

Applicants' Legal Analysis:

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b-1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code ("distributions"), that a fund may make with respect to any one taxable year to one, plus a supplemental "clean up" distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides, in relevant part, that the Commission may exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and

¹ Applicants request that any order issued granting the relief requested in the application also apply to any registered closed-end investment company currently advised or to be advised in the future by Stone Harbor (including any successor in interest) or by an entity controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with Stone Harbor (such entities, together with Stone Harbor, the "Investment Advisers") that decides in the future to rely on the requested relief. Any closed-end investment company that relies on the order in the future will comply with the terms and conditions of the application (such investment companies together with the Current Fund, the "Funds," and with the Investment Advisers, the "Applicants"). All existing Funds currently intending to rely on the order have been named as Applicants. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that one of the concerns leading to the enactment of section 19(b) and adoption of rule 19b-1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a-1 effectively addresses this concern by requiring that distributions (or the confirmation of the reinvestment thereof) estimated to be sourced in part from capital gains or capital be accompanied by a separate statement showing the sources of the distribution (e.g., estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital).

Applicants state that similar information is included in the Funds' annual reports to shareholders and on the Internal Revenue Service Form 1099 DIV, which is sent to each common and preferred shareholder who received distributions during a particular year.

4. Applicants further state that each of the Funds will make the additional disclosures required by the conditions set forth below, and each of them has adopted or will adopt compliance policies and procedures in accordance with rule 38a-1 under the Act to ensure that all required 19(a) Notices and disclosures are sent to shareholders. Applicants argue that by providing the information required by section 19(a) and rule 19a-1, and by complying with the procedures adopted under the Plan and the conditions listed below, each Fund's shareholders would be provided sufficient information to understand that their periodic distributions are not tied to a Fund's net investment income and realized capital gains to date, and may not represent yield or investment return. Accordingly, Applicants assert that continuing to subject the Funds to section 19(b) and rule 19b-1 would afford shareholders no extra protection.

5. Applicants note that section 19(b) and rule 19b-1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend ("selling the dividend"), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants submit that the "selling the dividend" concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares.

According to Applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that the common stock of closed-end funds generally tends to trade in the marketplace at a discount to their NAVs. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of capital gain.

7. Applicants assert that the application of rule 19b-1 to a Plan actually could have an inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b-1, the adoption of a periodic distribution plan imposes pressure on management (i) Not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b-1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants assert that by limiting the number of capital gain distributions that a fund may make with respect to any one year, rule 19b-1 may prevent the normal and efficient operation of a periodic distribution plan whenever that fund's net realized long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. Applicants also assert that rule 19b-1 may force fixed regular periodic distributions under a periodic distribution plan to be funded with returns of capital² (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though net realized long-term capital gains otherwise would be available. To

² Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

distribute all of a fund's long-term capital gains within the limits in rule 19b-1, a fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan, or to retain and pay taxes on the excess amount. Applicants assert that the requested order would minimize these anomalous effects of rule 19b-1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b-1.

9. Applicants state that Revenue Ruling 89-81 under the Code requires that a fund that seeks to qualify as a regulated investment company under the Code and that has both common stock and preferred stock outstanding designate the types of income, e.g., investment income and capital gains, in the same proportion as the total dividends distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89-81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b-1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89-81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b-1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are either fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer and Revenue Ruling 89-81 determines the proportion of such distributions that are comprised of long-term capital gains.

11. Applicants also submit that the "selling the dividend" concern is not applicable to preferred stock, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, dividend rate, credit quality and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) of the Act granting an exemption from the provisions of section 19(b) of the Act and rule 19b-1 thereunder to permit each Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common shares and as often as specified by or determined in accordance with the terms thereof in respect of its preferred shares.

Applicants' Conditions:

Applicants agree that, with respect to each Fund seeking to rely on the order, the order will be subject to the following conditions:

1. Compliance Review and Reporting:

The Fund's chief compliance officer will: (a) Report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) The Fund and its Investment Adviser have complied with the conditions of the order, and (ii) a material compliance matter, as defined in rule 38a-1(e)(2) under the Act, has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

2. Disclosures to Fund Shareholders:

(a) Each 19(a) Notice disseminated to the holders of the Fund's common shares, in addition to the information required by section 19(a) and rule 19a-1:

(i) Will provide, in a tabular or graphical format:

(1) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) the fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) the average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public

offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date. Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(ii) will include the following disclosure:

(1) "You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Plan";

(2) "The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income'";³ and

(3) "The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099-DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes."

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

³ The disclosure in condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

(b) On the inside front cover of each report to shareholders under rule 30e-1 under the Act, the Fund will:

(i) Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(ii) include the disclosure required by condition 2(a)(ii)(1) above;

(iii) state, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund shareholders; and

(iv) describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

(c) Each report provided to shareholders under rule 30e-1 under the Act and each prospectus filed with the Commission on Form N-2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

3. Disclosure to Shareholders, Prospective Shareholders and Third Parties:

(a) The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, in any written communication (other than a communication on Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common shareholder, prospective common shareholder or third-party information provider;

(b) The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and will file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, as an exhibit to its next filed Form N-CSR; and

(c) The Fund will post prominently a statement on its (or the Investment Adviser's) website containing the information in each 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, and will maintain such information on such website for at least 24 months.

4. Delivery of 19(a) Notices to Beneficial Owners: If a broker, dealer, bank or other person ("financial intermediary") holds common shares issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial

owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

5. Additional Board Determinations for Funds Whose Shares Trade at a Premium:

If:

(a) The Fund's common shares have traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Trustees:

(1) Will request and evaluate, and the Fund's Investment Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(2) will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and in the best interests of the Fund and its shareholders, after considering the information in condition 5(b)(i)(1) above; including, without limitation:

(A) Whether the Plan is accomplishing its purpose(s);

(B) the reasonably foreseeable material effects of the Plan on the Fund's long-term total return in relation

to the market price and NAV of the Fund's common shares; and

(C) the Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

(ii) The Board will record the information considered by it, including its consideration of the factors listed in condition 5(b)(i)(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

6. Public Offerings: The Fund will not make a public offering of the Fund's common shares other than:

(a) A rights offering below NAV to holders of the Fund's common shares;

(b) an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

(c) an offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) the Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,⁴ expressed as a percentage of NAV as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date;⁵ and

(ii) the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common shares as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the

⁴ If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

⁵ If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

terms of any outstanding preferred shares as such Fund may issue.

7. Amendments to Rule 19b-1:

The requested order will expire on the effective date of any amendment to rule 19b-1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-24587 Filed 9-23-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65352; File No. SR-BYX-2011-022]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend and Restate the Amended and Restated Bylaws of BATS Global Markets, Inc.

September 19, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 7, 2011, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend the bylaws of the Exchange's sole stockholder, BATS Global Markets, Inc.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 13, 2011, BATS Global Markets, Inc., the sole stockholder of the Exchange, filed a registration statement on Form S-1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the "IPO"). In connection with its IPO, BATS Global Markets, Inc. intends to amend and restate its Amended and Restated Bylaws (the "Current Bylaws") and adopt these changes as its Second Amended and Restated Bylaws (the "New Bylaws").

The amendments to the Current Bylaws include, among other things, (i) Revising the procedures for stockholder proposals and nomination of directors, (ii) revising the authority to call special meetings of the stockholders, (iii) revising the process for action by written consent of stockholders, (iv) revising the requirements for removal of directors, (v) removal of provisions relating to indemnification of officers and directors, (vi) eliminating the authority to make loans to corporate officers, and (vii) revising certain requirements for approval of future amendments to the New Bylaws.

The purpose of this rule filing is to submit for Commission approval the New Bylaws adopted by BATS Global Markets, Inc., the sole stockholder of the Exchange. The changes described herein relate to the bylaws of BATS Global Markets, Inc. only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and by-laws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by BATS Global Markets, Inc.

The Exchange has separately filed with the Commission a proposed amendment to the certificate of incorporation of BATS Global Markets, Inc. (the "New Certificate of Incorporation"). It is anticipated that the New Bylaws and the New Certificate of Incorporation will become effective (the "Effective Date") the moment before the closing of the IPO. The amendments to the bylaws primarily reflect (i) Changes to conform the Current Bylaws to provisions more customary for publicly-owned companies, (ii) amendments to conform the Current Bylaws to the New Certificate of Incorporation, and (iii) stylistic and other non-substantive changes.

Registered Office

Article I of the Current Bylaws designates the initial registered office of BATS Global Markets, Inc. in the State of Delaware as 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware. Section 1.01 of the New Bylaws would amend Article I to state the registered office will continue to be located at the same location and to further provide the board of directors with the authority to designate another location from time to time. This will provide the board with the flexibility to change the registered office in the future if it believes such a change is necessary.

Annual Meeting of Stockholders

Section 2.02(a) of the Current Bylaws require that an annual meeting of stockholders for the purpose of election of directors and such other business that comes before the meeting occur on the third Tuesday of January, or such other time as the board of directors may designate. The Amended Bylaws remove the reference to the third Tuesday of January from Section 2.02(a) and authorize the board of directors to determine the date and time of the annual meeting.

Section 2.02(b) of the Current Bylaws specifies the procedures for stockholders to properly bring matters before the annual meeting, including specifying that stockholders provide timely notice to BATS Global Markets, Inc. of the business desired to be brought before the meeting. In addition to the requirements contained in the Current Bylaws, Section 2.02(b) of the New Bylaws would require that the stockholder's notice (i) Disclose the text of the proposal, (ii) disclose the beneficial owner on whose behalf the proposal is being made, (iii) disclose all agreements, arrangements or understandings between the stockholder and any other person pursuant to which the proposal is being made, (iv) disclose

all arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder or any beneficial owner with respect to the securities of BATS Global Markets, Inc., and (v) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of BATS Global Markets, Inc. needed to approve or adopt the proposal, or otherwise solicit proxies from stockholders in support of the proposal.

Section 2.02(c) of the Current Bylaws specifies the procedures for stockholders to properly nominate persons for the board of directors, including that the stockholder provide timely notice to BATS Global Markets, Inc. In addition to the requirements contained in the Current Bylaws, Section 2.02(c) of the New Bylaws would require that the stockholder's notice (i) Disclose all agreements, arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder, beneficial owner or any such nominee with respect to the securities of BATS Global Markets, Inc., (ii) provide a representation that such stockholder is a stockholder entitled to vote at such meeting and intends to appear in person or by proxy at the meeting and to bring such nomination or other business before the meeting, and (iii) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of BATS Global Markets, Inc. needed to elect each such nominee, or otherwise solicit proxies from stockholders in support of the nomination.

The additional disclosure requirements being added to Sections 2.02(b) and 2.02(c) are intended to assure that stockholders asked to vote on a stockholder proposal or stockholder nominee are more fully informed in their voting and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.

The New Bylaws would further include a new Section 2.02(d) which would require that a stockholder

proposal or a stockholder nomination be disregarded if the stockholder (or a qualified representative) does not appear at the annual or special meeting to present the proposal or nomination, notwithstanding that proxies may have been received and counted for purposes of determining a quorum. A "qualified representative" would include a duly authorized officer, manager or partner of the stockholder, or such other person authorized in writing to act as such stockholder's proxy. The purpose of this requirement is to assure that the stockholders' time at meetings is used efficiently and only serious stockholder proposals and nominations are considered.

The New Bylaws would also add Section 2.02(e), which would require that a stockholder, in addition to (and in no way limiting) all requirements set forth in Section 2.02 with respect to proposals or nominations, must also comply with all applicable requirements of the Act and the rules and regulations promulgated thereunder.

New Section 2.02(f) of the New Bylaws would note that, notwithstanding anything to the contrary in the New Bylaws, the notice requirements with respect to business proposals or nominations would be deemed satisfied if the stockholder submitted a proposal in compliance with Rule 14a-8 of the Act³ and the proposal has been included in a proxy statement prepared by BATS Global Markets, Inc. to solicit proxies of the meeting of stockholders. This provision would assure that, in addition to proposals that meet the requirements of Section 2.02(b) of the New Bylaws, BATS Global Markets, Inc. would comply with the provisions of the Act and the rules promulgated thereunder with respect to the inclusion of stockholder proposals in its proxy statement.

Special Meetings of Stockholders

Section 2.03 of the Current Bylaws permits a special meeting of the stockholders to be called by any of (i) The chairman of the board of directors, (ii) the chief executive officer, (iii) the board of directors pursuant to a resolution passed by a majority of the board, or (iv) by the stockholders entitled to vote at least ten percent of the votes at the meeting. The New Bylaws would amend Section 2.03 to only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by the majority of the board. Additionally, whenever any holders of

preferred stock have the right to elect directors pursuant to the New Certificate of Incorporation, such holders may call, pursuant to the terms of a resolution adopted by the board, a special meeting of the holders of such preferred stock. These amendments are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of BATS Global Markets, Inc. through a special meeting of the stockholders.

Voting Rights

Section 2.07 of the Current Bylaws describes the rights of stockholders of BATS Global Markets, Inc. to vote their shares at a meeting of stockholders. The New Bylaws would amend Section 2.07 to further clarify that any share of stock of BATS Global Markets, Inc. held by BATS Global Markets, Inc. shall have no voting rights, except when such shares are held in a fiduciary capacity.

Action Without a Meeting

Section 2.10 of the Current Bylaws permits certain actions to be taken by written consent of stockholders if signed by the holders of outstanding stock representing not less than the number of votes necessary to authorize or take such action at a meeting where all shares entitled to vote were present and voted. Section 2.10(c) of the Current Bylaws also require that prompt notice of such actions by less than unanimous consent be given to those stockholders that did not consent in writing. The New Bylaws would amend Section 2.10(c) to clarify that such notice need only be provided to those stockholders who would have been entitled to notice of the meeting if the record date for such notice had been the date the written consent was delivered to BATS Global Markets, Inc.

Section 2.10(c) of the Current Bylaws further provides that no action by written consent may be taken following an initial public offering of the common stock of BATS Global Markets, Inc. The New Bylaws would amend Section 2.10(c) to instead provide that no action by written consent may be taken following a Change in Ownership, as defined in the New Certificate of Incorporation.⁴ This change is consistent with amendments contained in the New Certificate of Incorporation and is designed to prevent any stockholder from exercising undue

⁴ Under the New Certificate of Incorporation, a "Change in Ownership" is deemed to occur at such time as the beneficial owners of the Class B Common Stock and Non-Voting Class B Common Stock own, in the aggregate, less than a majority of the total voting power of BATS Global Markets, Inc.

control over the operation of the Exchange by circumventing the board of directors of BATS Global Markets, Inc. through action by written consent.

Removal of Directors

Section 3.05 of the Current Bylaws provides that the board of directors or any director may be removed, with or without cause, by the affirmative vote of at least sixty-six and two-thirds percent of the voting power of all then-outstanding shares of voting stock of BATS Global Markets, Inc. The New Bylaws would amend Section 3.05 to reduce the percentage of the voting power required to remove a director, with or without cause, from sixty-six and two-thirds percent to a simple majority.

The purpose of this amendment is to align BATS Global Markets, Inc.'s requirements for removal of directors with Section 141(k) of the Delaware General Corporation Law, which generally permits a simple majority of stockholders to remove any director or a board of directors with or without cause.

Committees of Directors

Section 3.10(a) of the Current Bylaws permit the board of directors to appoint an executive committee with certain enumerated powers of the board, as well as other committees permitted by law. The New Bylaws would amend Section 3.10(a) to eliminate specific reference to an executive committee and authorize the board to designate one or more committees that may exercise the power of the board to the extent permitted in the resolution designating the committee. This amendment would enhance the board's flexibility to create those committees it deems necessary and most efficient for the functioning of the board. Section 3.10(a) would be further amended to provide that no committee would have the power to (i) Approve, adopt or recommend to the stockholders any matter required by Delaware law to be submitted to stockholder approval, or (ii) adopt, amend or repeal any bylaw. These amendments are being made to assure that the full board of directors considers and passes upon these significant corporate decisions.

Preferred Stock Directors

The New Bylaws would add new Section 3.12 to clarify that whenever the holders of one or more classes or series of preferred stock have the right to elect a preferred stock director, pursuant to the New Certificate of Incorporation, the provisions of Article 3 of the New Bylaws relating to the election, term of

³ 17 CFR 240.14a-8.

office, filling of vacancies, removal, and other features of directorships would not apply to preferred stock directors. Rather, such features would be governed by the applicable provisions of the New Certificate of Incorporation. This amendment is consistent with the New Certificate of Incorporation with respect to the rights of preferred stockholders, should any class or series of preferred stock be issued with director voting rights in the future.

Form of Stock Certificates

The New Bylaws would amend Section 6.01 of the Current Bylaws to state that the shares of BATS Global Markets, Inc. shall be represented by certificates, unless the board provides by resolution that some or all of any class or series of stock be uncertificated. Except as otherwise provided by law, holders of certificated and uncertificated shares of the same class and series would have identical rights and obligations. The board will also have the power to make rules for issuance, transfer and registration of certificated or uncertificated shares, and the issuance of new certificates in lieu of those lost or destroyed. The New Bylaws further amend Section 6.01 to provide that BATS Global Markets, Inc. will not have the power to issue a certificate in bearer form. These amendments are intended to align the bylaws of BATS Global Markets, Inc. with standard provisions for Delaware public companies.

Indemnification

Article X of the Current Bylaws contains certain provisions for the indemnification of directors, officers, employees and certain other agents of BATS Global Markets, Inc. The New Bylaws will eliminate such provisions in their entirety. These provisions are being eliminated because provisions regarding indemnification will instead be contained in Article 10 of the New Certificate of Incorporation.

Future Bylaws Amendments

In addition to the power of the board to adopt, amend or repeal bylaws provided by Article Eighth of the current certificate of incorporation and Article 9 of the New Certificate of Incorporation, Article XII of the Current Bylaws permit the bylaws to be amended or repealed by the action of stockholders holding seventy percent of the shares entitled to vote. To conform to the New Certificate of Incorporation, Article 11 of the New Bylaws would amend Article XII to provide that, until a Change in Ownership, the bylaws may be adopted, amended or repealed by the

stockholders with the affirmative vote of not less than a majority of the total voting power then entitled to vote in the election of directors. Upon the occurrences of a Change in Ownership, the New Bylaws would provide that bylaws may be adopted, amended or repealed by the stockholders only with the affirmative vote of not less than seventy percent of the total voting power then entitled to vote in the election of directors.

This change is consistent with amendments contained in Section 9.02 of the New Certificate of Incorporation. Section 11.01(c) of the New Bylaws will maintain the provisions contained in Article XII of the Current Bylaws requiring that, for so long as BATS Global Markets, Inc. will control the Exchange, before any amendment to the New Bylaws may become effective, the amendment must be submitted to the board of directors of the Exchange, and if required by Section 19 of the Act,⁵ filed with or filed with and approved by the Commission.

Loans to Officers

Article XIII of the Current Bylaws authorize BATS Global Markets, Inc. to lend money to or guarantee obligations of any officer of the company under certain circumstances. In order to comply with Section 13(k)(1) of the Act,⁶ which will apply to BATS Global Markets, Inc. after the IPO, the New Bylaws eliminate this authority.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and 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.⁷ In particular, sections 2.03 and 2.10(c) of the proposed New Bylaws, which prohibit the ability of the stockholders to call a special meeting of the stockholders to act by written consent is consistent with Section 6(b)(1) of the Act, because it prevents any stockholder from exercising undue control over the operation of the Exchange and thereby enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations

thereunder, and the rules of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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 proposal 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 e-mail to rule-comments@sec.gov. Please include File No. SR-BYX-2011-022 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 No. SR-BYX-2011-022. This file number should be included on the subject line if e-mail 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/>

⁵ 15 U.S.C. 78s.

⁶ 15 U.S.C. 78m(k)(1).

⁷ 15 U.S.C. 78f(b).

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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing 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 No. SR-BYX-2011-022 and should be submitted on or before October 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.^a

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-24584 Filed 9-23-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65362; File No. SR-NASDAQ-2011-010]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Disapproving a Proposed Rule Change To Link Market Data Fees and Transaction Execution Fees

September 20, 2011.

I. Introduction

On January 10, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to discount certain market data fees and increase certain liquidity provider credits for members that both (1) Execute specified levels of

transaction volume on NASDAQ as a liquidity provider, and (2) purchase specified levels of market data from NASDAQ. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ Notice of filing of the proposed rule change was published in the **Federal Register** on January 27, 2011.⁴ The Commission suspended the proposed rule change and instituted proceedings to determine whether to disapprove the proposed rule change in an order published in the **Federal Register** on February 3, 2011.⁵ The Commission received three comment letters on the proposed rule change.⁶ On April 4, 2011, NASDAQ submitted a response letter to the comments.⁷ This order disapproves the proposed rule change.

II. Description of the Proposal

NASDAQ proposes to provide a discount on non-professional market data fees for NASDAQ Depth Data⁸ ("NASDAQ Depth Data-Product Fees") charged to a member that provides liquidity through the NASDAQ Market Center and incurs NASDAQ Depth Data Product Fees at certain specified levels.⁹ Specifically, a member would qualify as a:

- "Tier 1 Firm" for purposes of pricing during a particular month if it (i) Has an average daily volume of 12 million shares or more of liquidity

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See Securities Exchange Act Release No. 63745 (January 20, 2011) 76 FR 4970 ("Notice").

⁵ See Securities Exchange Act Release No. 63796 (January 28, 2011) 76 FR 6165 ("Order Instituting Disapproval Proceedings").

⁶ See Letter dated January 13, 2011 from William O'Brien, Chief Executive Officer, Direct Edge to Florence E. Harmon, Deputy Secretary, Commission (the "Direct Edge Letter"); Letter dated January 31, 2011 from Christopher Nagy, Managing Director Order Strategy, and Richard P. Urian, Global Head of Market Data, TD Ameritrade Inc. to Elizabeth M. Murphy, Secretary, Commission (the "TD Ameritrade Letter"); and Letter dated March 21, 2011 from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, and Markham Erickson, Executive Director and General Counsel, NetCoalition to Elizabeth M. Murphy, Secretary, Commission (the "SIFMA/NetCoalition Letter").

⁷ See Letter dated April 4, 2011 from Joan Conley, Senior Vice President, NASDAQ OMX Group, Inc. to Elizabeth M. Murphy, Secretary, Commission (the "NASDAQ Response Letter"). In addition, on August 2, 2011, counsel for NASDAQ submitted a brief letter. See Letter dated August 1, 2011 from Eugene Scalia, Gibson, Dunn & Crutcher LLP to Elizabeth M. Murphy, Secretary, Commission (the "NASDAQ Counsel Letter").

⁸ NASDAQ Depth Data includes National Quotation Data Service (individual market maker quotation data), TotalView (depth-of-book data for NASDAQ-listed securities), and OpenView (depth-of-book data for non-NASDAQ-listed securities) data products.

⁹ For a more detailed description of the proposed rule change, see Notice, *supra* note 4.

provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of \$150,000 or more.

- "Tier 2 Firm" for purposes of pricing during a particular month if it (i) Has an average daily volume of 35 million or more shares of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of \$300,000 or more.

- "Tier 3 Firm" for purposes of pricing during a particular month if it (i) Has an average daily volume of 65 million or more shares of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of \$500,000 or more.

Tier 1 Firms would receive a 15% discount on NASDAQ Depth Data Product Fees charged to them, Tier 2 Firms would receive a 35% discount on NASDAQ Depth Data Product Fees charged to them, and Tier 3 Firms would receive a 50% discount on NASDAQ Depth Data Product Fees charged to them.¹⁰ In addition, Tier 1 Firms would receive an increased liquidity provider credit for transactions executed on NASDAQ. Specifically, Tier 1 Firms would receive a credit of \$0.0028 per share for displayed liquidity and \$0.0015 per share for non-displayed liquidity, compared to the current liquidity provider credit of \$0.0020 per share of displayed liquidity and \$0.0010 per share of non-displayed liquidity applicable to these firms. There is no proposed enhancement to the existing liquidity provider credits at this time for Tier 2 and Tier 3 firms.

III. Summary of Comment Letters and NASDAQ's Response

The Commission received three comment letters objecting to the proposed rule change.¹¹ Shortly after NASDAQ filed the proposed rule change with the Commission, Direct Edge urged the Commission to suspend the proposed rule change and to institute proceedings to determine whether to approve or disapprove the proposal.¹² TD Ameritrade¹³ and SIFMA/NetCoalition believe that the

¹⁰ A NASDAQ member incurs non-professional fees when it offers NASDAQ Depth Data to natural persons that are not acting in a capacity that subjects them to financial industry regulation (e.g., retail customers).

¹¹ See *supra*, note 6.

¹² See Direct Edge Letter, *supra* note 6 at 1.

¹³ See TD Ameritrade Letter, *supra* note 6 at 1.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

filing should be disapproved by the Commission.

Evidence of Costs

SIFMA/NetCoalition argue that NASDAQ's proposal is deficient because NASDAQ does not provide any evidence of the costs of collecting and distributing market data to support the fairness and reasonableness of its fees.¹⁴ SIFMA/NetCoalition believe that NASDAQ's general contention that it incurs high fixed costs to operate its securities platform is inadequate to justify its proposed market data fees because SIFMA/NetCoalition believe those costs are driven principally, if not totally, by its trading services.¹⁵ DirectEdge and TD Ameritrade also argue that NASDAQ failed to provide necessary evidence of the costs of producing its market data as support for the fairness and reasonableness of its fees.¹⁶

NASDAQ responds that there is no legitimate basis for the demand that an exchange submit evidence on the marginal costs of collecting and distributing market data to prove a market data fee is "fair and reasonable."¹⁷ NASDAQ asserts that the Commission has already considered and rejected a cost-of-service ratemaking approach to setting market data fees, instead adopting an approach that relies on market forces to determine the prices of depth-of-book products.¹⁸ NASDAQ acknowledges that cost data could be relevant in determining reasonableness, but takes the position that the fixed costs of market data production are inseparable from the fixed costs of providing NASDAQ's trading platform.¹⁹

Joint Products

In its proposed rule change, NASDAQ argues that trade executions and market data are "joint products" which require NASDAQ to incur joint costs.²⁰ NASDAQ further states that these costs are inseparable because they are not uniquely incurred on behalf of either service provided by NASDAQ.²¹ Accordingly, NASDAQ is of the view that, given the joint nature of trade

executions and market data, a bundled discount that is linked to total spending across the joint products is economically sensible.²²

SIFMA/NetCoalition believe that NASDAQ's "joint products" theory is fundamentally flawed, and cannot support the conclusion that the proposed fees are fair and reasonable.²³ In their view, just because products are bundled together does not mean that the individual components are competitively priced or constrained by competitive forces.²⁴ SIFMA/NetCoalition also allege that NASDAQ offers no support for the conclusion that exchange competition constrains market data prices.²⁵ Further, SIFMA/NetCoalition argue that NASDAQ's joint products "platform competition theory" is flawed as a matter of economics, because order-execution services and market data are bought and sold separately, at different times, in different proportions and by different consumers.²⁶ Accordingly, in SIFMA/NetCoalition's view, the price of order execution services and market data is a result of distinct competitive conditions confronting each product, and competition for one does not constrain the pricing of the other.²⁷ In addition, SIFMA/NetCoalition argue that NASDAQ's theory incorrectly assumes that traders could readily switch orders to another platform in response to a price increase in market data, and thereby lower their trading costs, because the decision to purchase the data is made before and independent of the decision to trade.²⁸ And for those investors who purchase only market data from a platform and no other services, their only choice is to pay the non-discounted data prices imposed by the exchange—prices that in SIFMA/NetCoalition's view subsidize other exchange costs—or stop buying the data entirely.²⁹ Finally, SIFMA/NetCoalition argue that NASDAQ provided no actual evidence to support its platform competition theory.³⁰

NASDAQ responds that SIFMA/NetCoalition simply ignore the nature of competition among trading platforms, and states that customers can and do switch their trading volume from platform to platform, including in response to the total costs of trading on a particular platform.³¹ NASDAQ further believes that the evidence shows that NASDAQ does in fact compete for order flow by enhancing the quality of its data products and/or lowering the price of its data products.³²

In addition, NASDAQ argues that the proposed discount is not a "tying arrangement," and even if it could be fairly characterized as such, presents no meaningful risk of harm to competition, consumers, or the efficient function of the markets.³³ Instead, NASDAQ takes the position that the proposed discount is an attempt by NASDAQ to provide incentives to its best customers to purchase two NASDAQ products in high volumes, and to use market data discounts as a "carrot" to attract additional retail order flow to the exchange.³⁴ NASDAQ believes that the potential competitive harm characterized by a tying arrangement, which arises from a seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want or might have preferred to purchase elsewhere on different terms, does not arise from the NASDAQ proposal.³⁵ Even if the proposal was fairly characterized as a tying arrangement, NASDAQ believes the intensely competitive nature of the marketplace would remove any concerns, and argues that competitive forces ensure that its proposal is equitable, fair, and not unreasonably discriminatory.³⁶ Finally, NASDAQ stresses that it continues to offer all of its products separately at prices

satisfy its cost-justification obligations. See Direct Edge Letter, *supra* note 6 at 1.

³¹ See NASDAQ Response Letter, *supra* note 7 at 7.

³² See NASDAQ Response Letter, *supra* note 7 at 7.

³³ See NASDAQ Response Letter, *supra* note 7 at 9.

³⁴ See NASDAQ Response Letter, *supra* note 7 at 2.

³⁵ See NASDAQ Response Letter, *supra* note 7 at 9. NASDAQ also does not believe that the proposal involves a tying arrangement because customers are not required to purchase a tied product from NASDAQ, nor are they required to forgo purchases of any product from any competitor. See NASDAQ Response Letter, *supra* note 7 at 10. See also NASDAQ Counsel Letter, *supra* note 7.

³⁶ See NASDAQ Response Letter, *supra* note 7 at 2-3.

²² *Id.*

²³ See SIFMA/NetCoalition Letter, *supra* note 6 at 4.

²⁴ *See id.*

²⁵ See SIFMA/NetCoalition Letter, *supra* note 6 at 5.

²⁶ *See id.*

²⁷ See SIFMA/NetCoalition Letter, *supra* note 6 at 5.

²⁸ See SIFMA/NetCoalition Letter, *supra* note 6 at 5.

²⁹ See SIFMA/NetCoalition Letter, *supra* note 6 at 5.

³⁰ See SIFMA/NetCoalition Letter, *supra* note 6 at 6. Similarly, DirectEdge is of the view that NASDAQ's arguments about the intermingled nature of the data- and transaction-services costs of operating an exchange platform are insufficient to

¹⁴ See SIFMA/NetCoalition Letter, *supra* note 6 at 2-3.

¹⁵ See SIFMA/NetCoalition Letter, *supra* note 6 at 3.

¹⁶ See Direct Edge Letter and TD Ameritrade Letter, *supra* note 6.

¹⁷ See NASDAQ Response Letter, *supra* note 7 at 15.

¹⁸ See NASDAQ Response Letter, *supra* note 7 at 15.

¹⁹ See NASDAQ Response Letter, *supra* note 7 at 15-6.

²⁰ See Notice, *supra* note 4 at 4972.

²¹ *See id.*

approved by the Commission as fair and reasonable.³⁷

Constraints on Market Data Pricing

SIFMA/NetCoalition do not believe that NASDAQ provides sufficient support for its argument that alternative sources of information act to constrain the prices it can charge for depth-of-book market data.³⁸ SIFMA/NetCoalition argue that investors need depth-of-book data from all exchanges with substantial trading in a particular security in order to have a reasonably comprehensive picture of liquidity below the top of the book in that security. Accordingly, in SIFMA/NetCoalition's view, any institutional investor or informed or active retail investor who trades or holds multiple equity securities must buy NASDAQ's available market data as a matter of necessity.³⁹ Thus, SIFMA/NetCoalition argue that the availability of depth-of-book data from other venues does not effectively constrain the prices that NASDAQ can charge for depth-of-book data.⁴⁰

NASDAQ responds that the market for depth-of-book data products is fluid and robust, and that consumers of NASDAQ's depth-of-book product have different data needs, subscribe at different levels, and are sensitive to changes in price.⁴¹ NASDAQ further argues that the high degree of turnover that they have had in market data customers and the variation in subscription levels among users of NASDAQ data indicate that access to NASDAQ market data is not essential.⁴²

SIFMA/NetCoalition also argue that there is no evidence that competition for order flow constrains the price of market data, and suggests the data cited by NASDAQ in this regard is inadequate.⁴³ NASDAQ responds that competition for order flow can act as a significant constraint on depth-of-book data fees if those who purchase depth-of-book data direct a substantial volume of orders to the exchange, and presents evidence that it believes demonstrates this currently is the case at NASDAQ.⁴⁴

³⁷ See NASDAQ Response Letter, *supra* note 7 at 10.

³⁸ See SIFMA/NetCoalition Letter, *supra* note 6 at 6-7.

³⁹ See SIFMA/NetCoalition Letter, *supra* note 6 at 7.

⁴⁰ See SIFMA/NetCoalition Letter, *supra* note 6 at 7.

⁴¹ See NASDAQ Response Letter, *supra* note 7 at 19.

⁴² See NASDAQ Response Letter, *supra* note 7 at 19.

⁴³ See SIFMA Letter/NetCoalition, *supra* note 6 at 7-8.

⁴⁴ See NASDAQ Response Letter, *supra* note 7 at 20-21.

Unfair Discrimination

Finally, SIFMA/NetCoalition argue that the NASDAQ proposal is unfairly discriminatory because the proposed fee discounts are unavailable to firms that serve professional investors, or those that serve retail investors and purchase depth-of-book data but do not provide order execution services.⁴⁵

NASDAQ responds that differential pricing in response to competitive market conditions does not unreasonably discriminate between market participants.⁴⁶ NASDAQ notes that the Commission has accepted certain differential pricing structures, such as those based on volume or whether the recipient is a professional or non-professional.⁴⁷ NASDAQ takes the position that there is no evidence that the proposed discount would impair the functioning of the national market system or result in predatory prices, or threaten to injure competition among exchanges or customers.⁴⁸

IV. Discussion

Under Section 19(b)(2)(C) of the Act, the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to such organization.⁴⁹ The Commission shall disapprove a proposed rule change if it does not make such a finding.⁵⁰ The Commission's Rules of Practice, under Rule 700(b)(3), state that the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder * * * is on the self-regulatory organization that proposed the rule change" and that a "mere assertion that the proposed rule change is consistent with those requirements * * * is not sufficient."⁵¹

⁴⁵ See SIFMA/NetCoalition Letter, *supra* note 6 at 8-9.

⁴⁶ See NASDAQ Response Letter, *supra* note 7 at 11.

⁴⁷ See NASDAQ Response Letter, *supra* note 7 at 11, 13-14.

⁴⁸ See NASDAQ Response Letter, *supra* note 7 at 14.

⁴⁹ See 15 U.S.C. 78s(b)(2)(C)(i).

⁵⁰ See 15 U.S.C. 78s(b)(2)(C)(ii); see also 17 CFR 201.700(b)(3) and note 62 *infra*, and accompanying text.

⁵¹ See 17 CFR 201.700. The description of a proposed rule change, its purpose and operation, its effect; and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. See *id.* Any failure of a self-regulatory organization to provide the information elicited by Form 19b-4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change

After careful consideration, the Commission does not find that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵² In particular, the Commission does not find that the proposed rule change is consistent with: (1) Section 6(b)(4) of the Act which, among other things, requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;"⁵³ (2) Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be "not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;"⁵⁴ (3) Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act];"⁵⁵ and (4) Section 11A of the Act and Rules 603(a)(1) and 603(a)(2) of Regulation NMS which, among other things, require NASDAQ to distribute market data on terms that are "not unreasonably discriminatory."⁵⁶

NASDAQ proposes to link the level of fees that a market participant would be charged for obtaining NASDAQ market data to the extent of that market participant's trading in the NASDAQ market. In addition, the level of transaction credits that a market participant receives for trading on NASDAQ would in some cases be linked to the level of NASDAQ market data that it purchases. In the Order Instituting Disapproval Proceedings, the Commission highlighted the statutory provisions and rules referenced above, and expressed concern, among other things, that NASDAQ's proposal may fail to satisfy the standards under the Act and the rules thereunder that require market data fees to be equitable, fair, and not unreasonably discriminatory.⁵⁷ In addition, the Commission noted that it previously had stated that the Act precludes

is consistent with the Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization. *Id.*

⁵² In disapproving the 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).

⁵³ 15 U.S.C. 78f(b)(4).

⁵⁴ 15 U.S.C. 78f(b)(5).

⁵⁵ 15 U.S.C. 78f(b)(8).

⁵⁶ 15 U.S.C. 78k-1(a)(1)(C)(i)-(iv), 17 CFR 242.603(a)(1), and 17 CFR 242.603(a)(2).

⁵⁷ See Order Instituting Disapproval Proceedings at 4.

exchanges from adopting terms for market data distribution that unfairly discriminate by favoring participants in an exchange's market or penalizing participants in other markets, and expressed particular concern that NASDAQ's proposal may be inconsistent with that standard.⁵⁸ The Commission raised similar concerns with respect to NASDAQ's proposal to tie the level of transaction credits paid to market participants to the amount of market data they purchase.⁵⁹

The Commission does not believe NASDAQ has demonstrated that the incremental step of linking the pricing of trade executions and market data will not unnecessarily or inappropriately burden competition. As noted above, NASDAQ takes the position that trade executions and market data are "joint products," with joint costs, and that a bundled discount that is linked to total spending across both products is economically sensible. NASDAQ argues it currently faces intense competition for both trade executions and market data, and that its proposal is simply an attempt to incent its best customers to purchase both products in high volumes, and use market data discounts as a "carrot" to attract additional retail order flow to the exchange.

The Commission, however, does not believe that NASDAQ has adequately articulated why the linking of market data fees to execution volume, and the linking of transaction credits to market data purchases, will not negatively impact the competition that exists today in these two markets. In fact, the Commission believes that preventing the linking of market data fees to trade executions will help bolster competitive forces in the area of market data, because exchange market data fees must appeal simultaneously to market participants that trade directly on an exchange and those that do not trade directly on an exchange. The Commission notes that competition in the market for depth-of-book market data is significant, but is not as intense as competition for transaction services. This is at least in part due to the difficulty of attracting a sufficiently large volume of orders to generate valuable market data streams that a wide range of market participants will want to obtain, as opposed to the relative ease of establishing trading platforms. The Commission believes it is important to preserve competitive

forces for market data as much as possible.

The Commission is similarly concerned about placing an undue burden on competition in the execution services market. NASDAQ's proposal would allow it to use significant discounts on fees for its market data products as an inducement to attract order flow rather than relying on the quality of its transaction services and the level of its transaction fees to compete for orders. NASDAQ argues that any competitor exchange could choose to respond to the proposed pricing by NASDAQ by offering its own discounts on its data products.⁶⁰ However, exchanges that do not provide market data, or that already do not charge any participant for market data, would not be able to respond to NASDAQ's proposal with a similar pricing scheme. New exchanges generally do not have established market data streams and their market data is often free. Thus, new exchanges would not be able to offer a pricing scheme similar to NASDAQ's proposal because they will not have established market data streams they can offer at reduced rates to entice participants to execute trades on their new platforms.

The Commission also does not believe NASDAQ has demonstrated that the incremental step of linking the pricing of trade executions and market data is an equitable allocation of fees, or is not unfairly or unreasonably discriminatory. As noted above, NASDAQ believes the marketplace is intensely competitive, and argues that competitive forces ensure that its proposal is equitable, fair and not unreasonably discriminatory. NASDAQ's proposal, however, could result in market participants purchasing the same market data from NASDAQ paying different fees depending on the volume of transactions they execute on NASDAQ. NASDAQ's proposal also could result in market participants executing the same volume of transactions on NASDAQ receiving different transaction credits depending on the amount of market data they purchase from NASDAQ.

The Commission is concerned that the proposal would result in an inequitable allocation of fees, and unfairly or unreasonably discriminate against market participants who are large users of market data but not execution services, or who are large users of execution services but not market data. This could include, for example, market participants who need to divide their order flow among multiple exchanges

that trade NMS stocks, or that utilize market data but do not trade on NASDAQ, and thus do not provide sufficient transaction volume to NASDAQ to qualify for a larger market data discount or any discount at all. In this regard, the Commission is concerned that linking market data fees to transaction volume would essentially allow NASDAQ to charge significantly higher fees for market data to market participants that choose to trade at other exchanges, by providing discounts to those market participants that provide order flow to NASDAQ.⁶¹ As noted above, Rule 700(b)(3) of the Commission's Rules of Practice states that "[t]he burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder * * * is on the self-regulatory organization that proposed the rule change" and that a "mere assertion that the proposed rule change is consistent with those requirements * * * is not sufficient."⁶² For the reasons set forth above, the Commission does not believe that NASDAQ has met its burden to demonstrate that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

V. Conclusion

For the foregoing reasons, the Commission does not find that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with Sections 6(b)(4), 6(b)(5), 6(b)(8) and 11A of the Act and with Rule 603(a)(1) and (2) of Regulation NMS thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2011-010) be, and hereby is, disapproved.

⁶¹ "[A]n exchange proposal that seeks to penalize market participants for trading in markets other than the proposing exchange would present a substantial countervailing basis for finding unreasonable and unfair discrimination and likely would prevent the Commission from approving an exchange proposal." See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74791 (December 9, 2008) (SR-NYSEArca-2006-21) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data), vacated and remanded by *NetCoalition v. SEC*, No. 09-1042 (DC Cir. 2010) but on other grounds.

⁶² 17 CFR 201.700(b)(3).

⁵⁸ See Order Instituting Disapproval Proceedings at 5-6.

⁵⁹ See Order Instituting Disapproval Proceedings at 6.

⁶⁰ See NASDAQ Response Letter, *supra* note 7 at 14.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶³

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-24607 Filed 9-23-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65360; File No. SR-C2-2011-022]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Exchange's Complex Order Execution Mechanisms

September 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 16, 2011, the C2 Options Exchange, Incorporated ("Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend C2 Rules [sic] 6.13, *Complex Order Execution*. The text of the proposed rule change is available on the Exchange's Web site (<http://www.c2exchange.com/Legal/RuleFilings.aspx>), at the Exchange's Office of the Secretary and at 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 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

C2 Rule 6.13 governs the operation of the Exchange's electronic complex order book and electronic complex order auction (referred to as "COB" and "COA," respectively). The purpose of this proposed rule change is to incorporate a provision that would provide the Exchange with the ability to determine which electronic allocation algorithm shall apply for COB and/or COA executions on a class-by-class basis, subject to certain conditions. Currently, as described in more detail below, the allocation algorithms for COB and COA default to the allocation algorithms in effect for a given options class. As proposed, the rule change would provide the Exchange with the flexibility to permit the allocation algorithm in effect for COB/COA to be different from the default allocation algorithm in effect for the options class. The applicable algorithm for COB/COA would be selected from among the allocation algorithms set forth in Rule 6.12, *Order Execution and Priority*.⁵

Specifically, the Exchange is proposing as follows:

- *COB*: Currently, Rule 6.13(b)(1)(A) through (B) provides that, at the same net price, individual series component legs have priority over complex orders resting in the COB when executing against a complex order. If there are multiple complex orders resting in COB at the same price, the allocation of a complex order within COB is pursuant to the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs. The Exchange is proposing to amend Rule 6.13(b)(1)(B) to have the flexibility to determine to apply a different allocation algorithm for complex orders resting in COB. Such algorithm would be selected from among the algorithms set forth in Rule 6.12. (At the same price, the individual series legs will continue to

have priority over complex orders resting in COE regardless of the allocation algorithm that is chosen for complex orders resting in COB.)

- *COA*: Currently, Rule 6.13(c)(5)(A) through (D) provides that, at the same place [sic], individual series component legs have priority over complex orders resting in COB and COA responses when executing against an incoming COA-eligible order. To the extent there are multiple complex orders and responses at the same price, Rule 6.13(c)(5)(B) through (D) specifies that, at the same price, the allocation is based on public customer complex orders and responses having priority (with multiple public customer complex orders and responses being allocated based on time priority), then non-public customer complex orders resting in COB before the COA auction response time interval (with multiple non-public customer complex orders being allocated based on the allocation algorithm in effect for the individual component legs), then non-public customer complex orders resting in COB and responses received during the COA auction response time interval (with such multiple non-public customer complex orders and responses being allocated based on the allocation algorithm in effect for the individual component legs). The Exchange is proposing to amend the rule to have the flexibility to determine to apply a different allocation algorithm from the one set out in Rule 6.13(c)(5)(B) through (D) for complex orders and responses that trade against a COA-eligible order. Such algorithm would be selected from among the algorithms set forth in Rule 6.12, which may or may not include public customer priority. (At the same price, the individual series legs will continue to have priority over complex orders in COB and COA responses regardless of the allocation algorithm that is chosen for complex orders in COB and COA responses.) All pronouncements regarding allocation algorithm determinations by the Exchange will be announced to C2 Trading Permit Holders via Regulatory Circular.

As noted above, the allocation algorithm applied to COB/COA for each options class will be selected from among those set forth in Rule 6.12. Thus, the Exchange is not creating any new algorithms for the mechanisms, but is amending Rules [sic] 6.13 to provide the flexibility to choose an algorithm from among the existing algorithms to be applied to the COB/COA mechanisms rather than simply defaulting to the algorithm in effect for intra-day trading in an options class (e.g., the algorithm for intra-day trading

⁶³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The allocation algorithms include price-time priority, pro-rata priority, and price-time with primary public customer and secondary trade participation right priority. Each of these base allocation methodologies can be supplemented with an optional market turner priority overlay. See Rule 6.12(a) through (b).

may be established as pro-rata priority without public customer priority, while the algorithm for complex orders in COB and COA may be established as price-time priority (with or without public customer priority)). Regardless of the algorithm selected for complex order in COB or COA responses, the individual series legs retain priority over complex orders. All other aspects of COB/COA pursuant to Rules [sic] 6.13 shall apply unchanged. The Exchange believes that having this additional flexibility will allow the Exchange to select an allocation algorithm (from among the existing algorithms set forth in Rule 6.12) that the Exchange believes is appropriate considering the particular options class and mechanism. With respect to COA, the Exchange believes that having the ability to select an alternate algorithm will provide us with additional flexibility to incent market participants to respond to COA auctions.

The second purpose of the proposed rule change is to make a correction to the text of Rule 6.13 pertaining to complex orders. In particular, the Exchange is proposing to change the maximum permissible ratio for complex orders in COB, which is currently incorrectly identified as a ratio of one-to-two or lower, to a ratio of one-to-three or lower. As revised, this Rule 6.13 provision will conform the rule text with the definition of a ratio order in subparagraph (d)(5) of C2 Rule 6.10, *Order Types Defined*.⁶ We also note that the change to a maximum ratio of one-to-three is consistent with the electronic complex order book rules of other options exchanges.⁷

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5)⁸ that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the

⁶ Rule 6.10(d)(5) currently provides that a permissible ratio for a ratio order is any ratio that is equal to greater than one-to-three (.333) and less than or equal to three-to-one (3.00). The Exchange notes that Rule 6.10(d)(5) was amended as part of the C2 Form-1 application to become a national securities exchange in order to reflect this maximum one-to-three ratio. See Amendment 1 to C2 Form-1 Application, December 4, 2009. We are now seeking to conform the text of Rule 6.13.

⁷ See, e.g., Chicago Board Options Exchange, Incorporated ("CBOE") Rule 6.53C(c)(iii).

⁸ 15 U.S.C. 78f(b)(5).

Exchange believes the proposed change is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and national market system because the rule change would provide more flexibility for the Exchange to designate the allocation algorithm for COB and/or COA in a manner that is consistent with existing C2 rules. The Exchange also believes that correcting the text of Rule 6.13 to reflect the maximum ratio for complex orders in COB of one-to-three will provide additional clarity, avoid confusion and conform the rule text to be consistent with C2 Rule 6.10(d)(5) and the electronic complex order book rules of other options exchanges.⁹

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend

⁹ See note 3, [sic] *supra*, and surrounding discussion.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). C2 has requested that the Commission waive the five-day pre-filing notice requirement in Rule 19b-4(f)(6)(iii). The Commission waives the five-day pre-filing notice requirement.

such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-C2-2011-022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-C2-2011-022. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-

2011-022 and should be submitted on or before October 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-24594 Filed 9-23-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65361; File No. SR-ISE-2011-42]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Rule 717

September 20, 2011.

I. Introduction

On July 25, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to codify an existing policy related to the application of ISE Rules 717(d) and (e). The proposed rule change was published for comment in the *Federal Register* on August 8, 2011.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of Proposal

ISE Rules 717(d) and (e) require members to expose orders entered on the limit order book for at least one second before executing them as principal or against orders that were solicited from other broker-dealers. This requirement gives other market participants an opportunity to participate in the execution of orders before the entering member executes them. In its enforcement of ISE Rules 717(d) and (e), the Exchange has not considered the inadvertent interaction of orders from the same firm within one second to be a violation of the exposure requirement. The Exchange currently has a policy that member firms may demonstrate that orders were entered by individuals or systems that did not have the ability to know of the pre-existing order on the limit order book due to the

operation of effective information barriers in place at the time the orders were entered. This proposed rule change codifies this policy in Supplementary Material .06 to Rule 717. The proposed rule change will require that such information barriers be fully documented and provided to the Exchange upon request.⁴

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.⁵ The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.⁷

ISE Rules 717(d) and (e) require members to expose orders entered on the limit order book for at least one second before executing them as principal or against orders that were solicited from other broker-dealers. This requirement gives other market participants an opportunity to participate in the execution of orders before the entering member executes them. The Exchange represented that it conducts routine surveillance to identify instances when an order on the limit order book is executed against an order entered by the same firm within

one second. The Exchange represented that when it investigates potential violations of ISE Rules 717(d) and (e), it considers whether such executions during the one second exposure period were entered by persons, business units and/or systems at the same firm, and whether the firm has knowledge of pre-existing orders on the limit order book. Further, the Exchange indicated that it does not consider inadvertent interaction of such orders from the same firm during the one second exposure period to be a rule violation. This proposal codifies this policy by adding Supplementary Material .06 to Rule 717 to allow members to provide evidence of effective information barriers between the persons, business units and/or systems at the time of order entry to indicate that there was no knowledge of other pre-existing orders entered by the firm.

The Commission believes that this proposed rule change should clarify the intent and application of ISE Rules 717(d) and (e). In addition, the proposed rule change should enable Exchange to administer the rule more efficiently by helping to assure that member firms are adhering to the same standards for compliance with ISE Rules 717(d) and (e). The Commission therefore believes that the proposal is consistent with Section 6(b)(5) of the Act.⁸

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-ISE-2011-42), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-24593 Filed 9-23-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65353; File No. SR-BATS-2011-035]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend and Restate the Amended and Restated Bylaws of BATS Global Markets, Inc.

September 19, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

⁴ The Exchange reviews information barrier documentation to evaluate whether a member has implemented processes that are reasonably designed to prevent the flow of pre-trade order information given the particular structure of the member firm. Additionally, information barriers are reviewed as part of the Exchange's examination program, which is administered by the Financial Industry Regulatory Authority ("FINRA") pursuant to a regulatory services agreement.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 34-65011 (August 2, 2011), 76 FR 48187.

"Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 7, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend the bylaws of the Exchange's sole stockholder, BATS Global Markets, Inc. The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 13, 2011, BATS Global Markets, Inc., the sole stockholder of the Exchange, filed a registration statement on Form S-1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the "IPO"). In connection with its IPO, BATS Global Markets, Inc. intends to amend and restate its Amended and Restated Bylaws (the "Current Bylaws") and adopt these changes as its Second Amended and Restated Bylaws (the "New Bylaws").

The amendments to the Current Bylaws include, among other things, (i)

Revising the procedures for stockholder proposals and nomination of directors, (ii) revising the authority to call special meetings of the stockholders, (iii) revising the process for action by written consent of stockholders, (iv) revising the requirements for removal of directors, (v) removal of provisions relating to indemnification of officers and directors, (vi) eliminating the authority to make loans to corporate officers, and (vii) revising certain requirements for approval of future amendments to the New Bylaws.

The purpose of this rule filing is to submit for Commission approval the New Bylaws adopted by BATS Global Markets, Inc., the sole stockholder of the Exchange. The changes described herein relate to the bylaws of BATS Global Markets, Inc. only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and by-laws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by BATS Global Markets, Inc.

The Exchange has separately filed with the Commission a proposed amendment to the certificate of incorporation of BATS Global Markets, Inc. (the "New Certificate of Incorporation"). It is anticipated that the New Bylaws and the New Certificate of Incorporation will become effective (the "Effective Date") the moment before the closing of the IPO. The amendments to the bylaws primarily reflect (i) Changes to conform the Current Bylaws to provisions more customary for publicly-owned companies, (ii) amendments to conform the Current Bylaws to the New Certificate of Incorporation, and (iii) stylistic and other non-substantive changes.

Registered Office

Article I of the Current Bylaws designates the initial registered office of BATS Global Markets, Inc. in the State of Delaware as 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware. Section 1.01 of the New Bylaws would amend Article I to state the registered office will continue to be located at the same location and to further provide the board of directors with the authority to designate another location from time to time. This will provide the board with the flexibility to change the registered office in the future if it believes such a change is necessary.

Annual Meeting of Stockholders

Section 2.02(a) of the Current Bylaws require that an annual meeting of stockholders for the purpose of election of directors and such other business that

comes before the meeting occur on the third Tuesday of January, or such other time as the board of directors may designate. The Amended Bylaws remove the reference to the third Tuesday of January from Section 2.02(a) and authorize the board of directors to determine the date and time of the annual meeting.

Section 2.02(b) of the Current Bylaws specifies the procedures for stockholders to properly bring matters before the annual meeting, including specifying that stockholders provide timely notice to BATS Global Markets, Inc. of the business desired to be brought before the meeting. In addition to the requirements contained in the Current Bylaws, Section 2.02(b) of the New Bylaws would require that the stockholder's notice (i) Disclose the text of the proposal, (ii) disclose the beneficial owner on whose behalf the proposal is being made, (iii) disclose all agreements, arrangements or understandings between the stockholder and any other person pursuant to which the proposal is being made, (iv) disclose all arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder or any beneficial owner with respect to the securities of BATS Global Markets, Inc., and (v) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of BATS Global Markets, Inc. needed to approve or adopt the proposal, or otherwise solicit proxies from stockholders in support of the proposal.

Section 2.02(c) of the Current Bylaws specifies the procedures for stockholders to properly nominate persons for the board of directors, including that the stockholder provide timely notice to BATS Global Markets, Inc. In addition to the requirements contained in the Current Bylaws, Section 2.02(c) of the New Bylaws would require that the stockholder's notice (i) Disclose all agreements, arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder, beneficial owner or any such nominee with respect to the securities of BATS Global Markets, Inc., (ii) provide a representation that such stockholder is a stockholder entitled to vote at such meeting and intends to appear in person or by proxy at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

meeting and to bring such nomination or other business before the meeting, and (iii) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of BATS Global Markets, Inc. needed to elect each such nominee, or otherwise solicit proxies from stockholders in support of the nomination.

The additional disclosure requirements being added to Sections 2.02(b) and 2.02(c) are intended to assure that stockholders asked to vote on a stockholder proposal or stockholder nominee are more fully informed in their voting and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.

The New Bylaws would further include a new Section 2.02(d) which would require that a stockholder proposal or a stockholder nomination be disregarded if the stockholder (or a qualified representative) does not appear at the annual or special meeting to present the proposal or nomination, notwithstanding that proxies may have been received and counted for purposes of determining a quorum. A "qualified representative" would include a duly authorized officer, manager or partner of the stockholder, or such other person authorized in writing to act as such stockholder's proxy. The purpose of this requirement is to assure that the stockholders' time at meetings is used efficiently and only serious stockholder proposals and nominations are considered.

The New Bylaws would also add Section 2.02(e), which would require that a stockholder, in addition to (and in no way limiting) all requirements set forth in Section 2.02 with respect to proposals or nominations, must also comply with all applicable requirements of the Act and the rules and regulations promulgated thereunder.

New Section 2.02(f) of the New Bylaws would note that, notwithstanding anything to the contrary in the New Bylaws, the notice requirements with respect to business proposals or nominations would be deemed satisfied if the stockholder submitted a proposal in compliance with Rule 14a-8 of the Act³ and the proposal has been included in a proxy statement prepared by BATS Global Markets, Inc. to solicit proxies of the

meeting of stockholders. This provision would assure that, in addition to proposals that meet the requirements of Section 2.02(b) of the New Bylaws, BATS Global Markets, Inc. would comply with the provisions of the Act and the rules promulgated thereunder with respect to the inclusion of stockholder proposals in its proxy statement.

Special Meetings of Stockholders

Section 2.03 of the Current Bylaws permits a special meeting of the stockholders to be called by any of (i) The chairman of the board of directors, (ii) the chief executive officer, (iii) the board of directors pursuant to a resolution passed by a majority of the board, or (iv) by the stockholders entitled to vote at least ten percent of the votes at the meeting. The New Bylaws would amend Section 2.03 to only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by the majority of the board. Additionally, whenever any holders of preferred stock have the right to elect directors pursuant to the New Certificate of Incorporation, such holders may call, pursuant to the terms of a resolution adopted by the board, a special meeting of the holders of such preferred stock. These amendments are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of BATS Global Markets, Inc. through a special meeting of the stockholders.

Voting Rights

Section 2.07 of the Current Bylaws describes the rights of stockholders of BATS Global Markets, Inc. to vote their shares at a meeting of stockholders. The New Bylaws would amend Section 2.07 to further clarify that any share of stock of BATS Global Markets, Inc. held by BATS Global Markets, Inc. shall have no voting rights, except when such shares are held in a fiduciary capacity.

Action Without a Meeting

Section 2.10 of the Current Bylaws permits certain actions to be taken by written consent of stockholders if signed by the holders of outstanding stock representing not less than the number of votes necessary to authorize or take such action at a meeting where all shares entitled to vote were present and voted. Section 2.10(c) of the Current Bylaws also require that prompt notice of such actions by less than unanimous consent be given to those stockholders that did not consent in writing. The New Bylaws would amend Section

2.10(c) to clarify that such notice need only be provided to those stockholders who would have been entitled to notice of the meeting if the record date for such notice had been the date the written consent was delivered to BATS Global Markets, Inc.

Section 2.10(c) of the Current Bylaws further provides that no action by written consent may be taken following an initial public offering of the common stock of BATS Global Markets, Inc. The New Bylaws would amend Section 2.10(c) to instead provide that no action by written consent may be taken following a Change in Ownership, as defined in the New Certificate of Incorporation.⁴ This change is consistent with amendments contained in the New Certificate of Incorporation and is designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of BATS Global Markets, Inc. through action by written consent.

Removal of Directors

Section 3.05 of the Current Bylaws provides that the board of directors or any director may be removed, with or without cause, by the affirmative vote of at least sixty-six and two-thirds percent of the voting power of all then-outstanding shares of voting stock of BATS Global Markets, Inc. The New Bylaws would amend Section 3.05 to reduce the percentage of the voting power required to remove a director, with or without cause, from sixty-six and two-thirds percent to a simple majority.

The purpose of this amendment is to align BATS Global Markets, Inc.'s requirements for removal of directors with Section 141(k) of the Delaware General Corporation Law, which generally permits a simple majority of stockholders to remove any director or the board of directors with or without cause.

Committees of Directors

Section 3.10(a) of the Current Bylaws permit the board of directors to appoint an executive committee with certain enumerated powers of the board, as well as other committees permitted by law. The New Bylaws would amend Section 3.10(a) to eliminate specific reference to an executive committee and authorize the board to designate one or more committees that may exercise the power

⁴ Under the New Certificate of Incorporation, a "Change in Ownership" is deemed to occur at such time as the beneficial owners of the Class B Common Stock and Non-Voting Class B Common Stock own, in the aggregate, less than a majority of the total voting power of BATS Global Markets, Inc.

³ 17 CFR 240.14a-8.

of the board to the extent permitted in the resolution designating the committee. This amendment would enhance the board's flexibility to create those committees it deems necessary and most efficient for the functioning of the board. Section 3.10(a) would be further amended to provide that no committee would have the power to (i) Approve, adopt or recommend to the stockholders any matter required by Delaware law to be submitted to stockholder approval, or (ii) adopt, amend or repeal any bylaw. These amendments are being made to assure that the full board of directors considers and passes upon these significant corporate decisions.

Preferred Stock Directors

The New Bylaws would add new Section 3.12 to clarify that whenever the holders of one or more classes or series of preferred stock have the right to elect a preferred stock director, pursuant to the New Certificate of Incorporation, the provisions of Article 3 of the New Bylaws relating to the election, term of office, filling of vacancies, removal, and other features of directorships would not apply to preferred stock directors. Rather, such features would be governed by the applicable provisions of the New Certificate of Incorporation. This amendment is consistent with the New Certificate of Incorporation with respect to the rights of preferred stockholders, should any class or series of preferred stock be issued with director voting rights in the future.

Form of Stock Certificates

The New Bylaws would amend Section 6.01 of the Current Bylaws to state that the shares of BATS Global Markets, Inc. shall be represented by certificates, unless the board provides by resolution that some or all of any class or series of stock be uncertificated. Except as otherwise provided by law, holders of certificated and uncertificated shares of the same class and series would have identical rights and obligations. The board will also have the power to make rules for issuance, transfer and registration of certificated or uncertificated shares, and the issuance of new certificates in lieu of those lost or destroyed. The New Bylaws further amend Section 6.01 to provide that BATS Global Markets, Inc. will not have the power to issue a certificate in bearer form. These amendments are intended to align the bylaws of BATS Global Markets, Inc. with standard provisions for Delaware public companies.

Indemnification

Article X of the Current Bylaws contains certain provisions for the indemnification of directors, officers, employees and certain other agents of BATS Global Markets, Inc. The New Bylaws will eliminate such provisions in their entirety. These provisions are being eliminated because provisions regarding indemnification will instead be contained in Article 10 of the New Certificate of Incorporation.

Future Bylaws Amendments

In addition to the power of the board to adopt, amend or repeal bylaws provided by Article Eighth of the current certificate of incorporation and Article 9 of the New Certificate of Incorporation, Article XII of the Current Bylaws permit the bylaws to be amended or repealed by the action of stockholders holding seventy percent of the shares entitled to vote. To conform to the New Certificate of Incorporation, Article 11 of the New Bylaws would amend Article XII to provide that, until a Change in Ownership, the bylaws may be adopted, amended or repealed by the stockholders with the affirmative vote of not less than a majority of the total voting power then entitled to vote in the election of directors. Upon the occurrences of a Change in Ownership, the New Bylaws would provide that bylaws may be adopted, amended or repealed by the stockholders only with the affirmative vote of not less than seventy percent of the total voting power then entitled to vote in the election of directors.

This change is consistent with amendments contained in Section 9.02 of the New Certificate of Incorporation. Section 11.01(c) of the New Bylaws will maintain the provisions contained in Article XII of the Current Bylaws requiring that, for so long as BATS Global Markets, Inc. will control the Exchange, before any amendment to the New Bylaws may become effective, the amendment must be submitted to the board of directors of the Exchange, and if required by Section 19 of the Act,⁵ filed with or filed with and approved by the Commission.

Loans to Officers

Article XIII of the Current Bylaws authorize BATS Global Markets, Inc. to lend money to or guarantee obligations of any officer of the company under certain circumstances. In order to comply with Section 13(k)(1) of the Act,⁶ which will apply to BATS Global

Markets, Inc. after the IPO, the New Bylaws eliminate this authority.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and 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.⁷ In particular, Sections 2.03 and 2.10(c) of the proposed New Bylaws, which prohibit the ability of the stockholders to call a special meeting of the stockholders to act by written consent is consistent with Section 6(b)(1) of the Act, because it prevents any stockholder from exercising undue control over the operation of the Exchange and thereby enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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,

⁵ 15 U.S.C. 78s.

⁶ 15 U.S.C. 78m(k)(1).

⁷ 15 U.S.C. 78f(b).

including whether the proposal 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 e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2011-035 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 No. SR-BATS-2011-035. This file number should be included on the subject line if e-mail 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing 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 No. SR-BATS-2011-035 and should be submitted on or before October 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-24586 Filed 9-23-11; 8:45 am]

BILLING CODE 8011-01-P

⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65354; File No. SR-CHX-2011-29]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Change the Status of Exchange-Registered Institutional Broker Firms

September 19, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on September 14, 2011, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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

CHX proposes to amend its rules regarding Exchange-registered Institutional Broker firms to clarify their status. The text of this proposed rule change is available on the Exchange's Web site at (<http://www.chx.com>) and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 Changes

1. Purpose

The Exchange is proposing to add Interpretation and Policy .04 to Article 17, Rule 3 to clarify the status of Exchange-registered Institutional Broker firms ("Institutional Brokers") as not

operating on the Exchange. By this proposal, the Exchange believes that it will enable existing and new Institutional Broker firms to engage in trading activities in a less restrictive manner than is currently the case. The Exchange is also proposing to delete Article 20, Rule 7 (Clearing the Matching System) since that requirement is predicated on Institutional Brokers being considered as operating on the Exchange. Notwithstanding this redefinition of the status of Institutional Brokers, the Exchange continues to believe that a separate pricing schedule for orders submitted by Institutional Brokers for execution and/or submission for clearance and settlement is appropriate and represents an equitable allocation of fees for Exchange Participants.

Institutional Brokers are an elective sub-category of Exchange Participants requiring registration with the Exchange. In addition to the other provisions of Exchange rules, Institutional Brokers are subject to the obligations of Article 17 of the CHX rules. Institutional Broker firms typically provide manual order handling and execution services for other broker-dealers or institutional clients, and are the successors to the floor brokers under the Exchange's previous floor-based, auction trading model. This model was eliminated as part of the implementation of Regulation NMS and Exchange's transition to its New Trading Model, which features an electronic limit order matching system as its core trading facility.³ The Commission's order approving the Exchange's New Trading Model noted, "Institutional brokers would be deemed to be participants operating on the Exchange, although they would not effect transactions from a physical trading floor (since the Exchange will no longer have a physical trading floor) and could trade from any location. A customer order would be deemed to be on the Exchange when received by an institutional broker, but would not have priority in the Matching System until it is entered into the system."⁴ Although an Institutional Broker has traditionally been deemed to be operating on the Exchange, due to certain changes in their function the CHX is proposing to treat Institutional Brokers as no longer operating on the Exchange. As such, an order that is sent to an Institutional Broker shall not be

³ The Exchange replaced its traditional auction marketplace with its New Trading Model beginning in 2006. See Securities Exchange Act Rel. No. 54550 (Sept. 29, 2006), 71 FR 59563 (Oct. 10, 2006) (SR-CHX-2006-05).

⁴ *Id.*, Section II.C. *Institutional Brokers*.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

deemed to be "on the Exchange" unless and until such order is entered into the Exchange's Matching System.

New Interpretation and Policy .04 to Rule 3 of Article 17 would define an Institutional Broker firm as a CHX Participant firm which voluntarily elects to register with the Exchange as such, and satisfies the Exchange's requirements as set forth in Article 17. Under the current proposal, an Institutional Broker firm shall not be regarded as operating on the Exchange.⁵ Until fairly recently, Institutional Brokers were permitted to execute trades outside the Exchange's core trading facility, the Matching System, while still considered to be on the Exchange. Utilizing a functionality known as the Validated Cross, Institutional Brokers were able to execute cross transactions based upon the state of the national market and orders residing in the Matching System at the time the parties agreed to the execution, rather than as of the entry of all essential terms into the electronic systems used by Institutional Brokers to handle and execute such transactions.⁶ In December 2010, however, the Exchange eliminated the Validated Cross functionality and ability of Institutional Brokers to execute transactions on the CHX otherwise than through the Matching System.⁷ Given this change, there is no longer any meaningful reason to treat Institutional Brokers as operating on the Exchange and the proposed Interpretation and Policy .04 reflects that determination. The Exchange is also proposing to delete certain references to Institutional Brokers and/or their activity as being "on the Exchange" in Article 11, Rule 3(e) and in Article 17, Rule 3(a) and in Interpretation and Policy .01 thereto.⁸

The Exchange is further proposing to delete Article 20, Rule 7 (Clearing the Matching System), which requires Institutional Brokers to attempt to execute trades on the Exchange before routing the order to another destination, except if the Institutional Broker is trading for its own account or its customer specifically requests otherwise. Given that Institutional Brokers will no longer be treated as operating on Exchange, the CHX does

not believe that these restrictions are appropriate. Broker-dealers which are not part of our facilities should have the freedom to route orders to any destination.⁹ Consequently, we are proposing to delete these requirements from our rules.

Pursuant to this proposal, an Institutional Broker would not be considered as operating on the Exchange and its trading activity within the Matching System would be treated the same as any other order sending Participant which is not registered as an Institutional Broker, except as to fees as discussed below. Currently, Institutional Brokers are not permitted to execute transactions directly in the over-the-counter ("OTC") marketplace since they are regarded as being part of the Exchange's trading facilities.¹⁰ Since the proposed Interpretation and Policy would define Institutional Brokers as being "off-Exchange," those restrictions would no longer exist and Institutional Brokers would be permitted to execute trades directly in the OTC marketplace, subject to the rules of the appropriate self-regulatory organization ("SRO").¹¹ Accordingly, the Exchange is proposing to clarify in Article 17, Rule 1 that Institutional Brokers can effect transactions on the Exchange and in other market centers since Institutional Brokers will no longer be deemed to be operating on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,¹² and furthers the objectives of Section 6(b)(5) in particular,¹³ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest by redefining Institutional Brokers as no longer

operating on the Exchange. With the repeal of the Validated Cross functionality and rules, there is no longer any reason to treat Institutional Brokers as trading directly from the Exchange's facilities. The proposed redefinition of the role of Institutional Brokers properly aligns our rules with the current operation of those firms and will permit them to more effectively compete with other broker-dealers and serve the interests of their customers and investors. The elimination of the requirement of Institutional Brokers to clear the Matching System before sending customer orders to other trading centers will likewise assist them in competing with other broker-dealers in a free and open market, and will allow them to better serve the interests of their customers and investors.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls by continuing to provide for separate billing rates for transactions executed or handled by an Institutional Broker. The Exchange currently assesses separate fees and charges for transactions which are submitted to the CHX by Institutional Brokers.¹⁶ These fees are charged to the Participant firm in whose name the transactions are submitted for clearance and settlement. Typically, the Institutional Broker acts as agent for the Participant or for a correspondent thereof if the Participant is a clearing firm. In general, the fee rates associated with transactions submitted through an Institutional Broker may be higher than other transactions submitted directly into the Matching System, although there is a ceiling or cap for such charges which may make the overall fee lower in some circumstances. Despite the reclassification of Institutional Brokers as "off-Exchange," the CHX continues to believe that the separate billing structure for transactions submitted through an Institutional Broker is appropriate and represents an equitable allocation of fees to Participants.

The Exchange provides trading and support technology services to Institutional Brokers without separate charges in order to facilitate their transactions on and through the Exchange. For example, the Exchange

⁵ Orders submitted by Institutional Brokers to the CHX's Matching System would be regarded as being on the Exchange.

⁶ See, e.g., CHX Market Regulation Department Information Memorandum MR-07-9 (Dec. 6, 2007).

⁷ See Securities Exchange Act Rel. No. 63564 (Dec. 16, 2010), 75 FR 80870 (Dec. 23, 2010) (SR-CHX-2010-25).

⁸ In Article 11, Rule 3(e), we have added language requiring that Institutional Brokers and Market Makers be registered with the Exchange for the provisions to be applicable.

⁹ Such ability to route orders to any market center is also consistent with CHX Article 9, Rule 24 which states "No rule, stated policy or practice of this exchange shall prohibit or condition, or be construed to prohibit, condition or otherwise limit, directly or indirectly, the ability of any Participant to effect any transaction otherwise than on this exchange in any reported security listed and registered on this exchange or as to which unlisted trading privileges on this exchange have been extended which is not a covered security."

¹⁰ See CHX Market Regulation Department Information Memorandum MR-11-09 (July 14, 2011), available on the Exchange's public Web site, <http://www.chx.com>.

¹¹ Currently, the SRO for the OTC marketplace is FINRA.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See CHX Fee Schedule, Sections E.3. and E.7.

makes the Brokerplex® order management and recordation system available to Institutional Brokers without charge.¹⁷ Brokerplex is used by Institutional Brokers to receive, transmit and hold orders from their clients while seeking execution within the CHX Matching System or elsewhere in the National Market System. Reports of orders, including the terms of any executions thereof, submitted via Brokerplex are kept by the system. The Exchange also provides operational and back office support services to Institutional Brokers using Brokerplex to handle orders and execute transactions on the Exchange. Finally, the Exchange expends a significant amount of its regulatory resources policing the activities of Institutional Brokers. The separate fee structure for orders submitted through Institutional Brokers helps offset these expenses. The Exchange also provides a credit in its Fee Schedule to Institutional Brokers in their monthly billings based upon a percentage of revenue generated to the Exchange as a result of transactions submitted by that Institutional Broker. This arrangement benefits the Exchange by incenting Institutional Brokers to register with the CHX under Article 17 and direct orders to the Exchange for execution.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

¹⁷ Use of the Brokerplex system satisfies the requirement that Institutional Brokers handle orders within an integrated electronic system. Article 17, Rule 3.b.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2011-29 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-CHX-2011-29. This file number should be included on the subject line if e-mail 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will 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-CHX-2011-29 and should be submitted on or before October 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-24588 Filed 9-23-11; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12836 and #12837]

Maryland Disaster #MD-00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maryland (FEMA-4034-DR), dated 09/16/2011.

Incident: Hurricane Irene.
Incident Period: 08/24/2011 through 09/05/2011.

Effective Date: 09/16/2011.
Physical Loan Application Deadline Date: 11/15/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/18/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/16/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications 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: Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Anne's, Saint Mary's, Somerset, Talbot, Wicomico, Worcester.

The Interest Rates Are:

	Percent
<i>For Physical Damage:</i>	
Non-profit organizations with credit available elsewhere	3.250
Non-profit organizations without credit available elsewhere	3.000

¹⁸ 17 CFR 200.30-3(a)(12).

	Percent
<i>For Economic Injury:</i> Non-profit organizations without credit available elsewhere	3.000

The number assigned to this disaster for physical damage is 128368 and for economic injury is 128378.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-24548 Filed 9-23-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12786 and #12787]

Vermont Disaster Number VT-00022

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA-4022-DR), dated 09/01/2011.

Incident: Tropical Storm Irene.
Incident Period: 08/27/2011 through 09/02/2011.

Effective Date: 09/16/2011.
Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of VERMONT, dated 09/01/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Grand Isle.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-24554 Filed 9-23-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12834 and #12835]

New Jersey Disaster #NJ-00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA-4033-DR), dated 09/15/2011.

Incident: Severe Storms and Flooding.
Incident Period: 08/13/2011 through 08/15/2011.

Effective Date: 09/15/2011.
Physical Loan Application Deadline Date: 11/14/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/15/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications 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: Cumberland, Gloucester, Salem.

The Interest Rates Are:

	Percent
<i>For Physical Damage:</i> Non-profit organizations with credit available elsewhere	3.250
Non-profit organizations without credit available elsewhere	3.000
<i>For Economic Injury:</i> Non-profit organizations without credit available elsewhere	3.000

The number assigned to this disaster for physical damage is 128346 and for economic injury is 128356.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-24549 Filed 9-23-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12784 and #12785]

Vermont Disaster Number VT-00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Vermont (FEMA-4022-DR), dated 09/01/2011.

Incident: Tropical Storm Irene.
Incident Period: 08/27/2011 through 09/02/2011.

Effective Date: 09/15/2011.
Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Vermont, dated 09/01/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Franklin, Lamoille, Orleans.

All contiguous counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-24556 Filed 9-23-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12714 and #12715]

Montana Disaster Number MT-00062

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Montana (FEMA-1996-DR), dated 07/26/2011.

Incident: Severe Storms and Flooding.

Incident Period: 04/03/2011 through 07/22/2011.

Effective Date: 09/19/2011.

Physical Loan Application Deadline Date: 10/11/2011.

EIDL Loan Application Deadline Date: 04/26/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Montana, dated 07/26/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 10/11/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-24570 Filed 9-23-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12815 and #12816]

Texas Disaster Number TX-00381

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA-4029-DR), dated 09/09/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 and continuing.

Effective Date: 09/16/2011.

Physical Loan Application Deadline Date: 11/08/2011.

EIDL Loan Application Deadline Date: 06/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration

for the State of Texas, dated 09/09/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Grimes, Gregg, Montgomery, Walker, Waller.

Contiguous Counties: (Economic Injury Loans Only): Texas: Fort Bend, Harris, Harrison, Liberty, Rusk, San Jacinto, Smith, Upshur, Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-24564 Filed 9-23-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Region II Buffalo District Advisory Council; Public Meeting

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Region II Buffalo District Advisory Council. The meeting will be open to the public.

DATES: The meeting will be held on October 12, 2011 from approximately 9:30 a.m. to 11:30 a.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the Canisius College Amherst Conference Center, 300 Corporate Parkway, Amherst, New York 14226.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Region II Buffalo District Advisory Council. The Region II Buffalo District Advisory Council is tasked with providing information of public interest.

The purpose of the meeting is so the council can provide advice and opinions regarding the effectiveness of and need for SBA programs, particularly the local districts which members represent. The agenda will include: district office, SBA programs and services, government contracting, disaster updates, lending activity reports, small business week, event announcements, and roundtable discussion on small business issues.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Region II Buffalo District Advisory Council must contact Franklin J. Sciortino, district director, Buffalo district office by October 5, by fax or email in order to be placed on the agenda. Franklin J. Sciortino, District Director, Buffalo District Office, U.S. Small Business Administration, 540 Niagara Center, 130 S. Elmwood Avenue, Buffalo, New York 14202; telephone (716) 551-4301 or fax (716) 551-4418.

Additionally, if you need accommodations because of a disability or require additional information, please contact Kelly Lotempio, BDS/PIO, Buffalo District Office, U.S. Small Business Administration, 540 Niagara Center, 130 S. Elmwood Avenue, Buffalo, New York 14202; telephone (716) 551-4301, kelly.lotempio@sba.gov or fax (716) 551-4418.

For more information on SBA, please visit our Web site at <http://www.sba.gov>.

Dated: September 16, 2011.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2011-24571 Filed 9-23-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 10/70-0198 issued to Fluke Venture Partners II, L.P., and said license is hereby declared null and void.

By: United States Small Business Administration.

Dated: September 15, 2011.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011-24572 Filed 9-23-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Ninth Meeting: RTCA Special Committee 224: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 224 meeting: Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 224: Airport Security Access Control Systems.

DATES: The meeting will be held October 20, 2011, from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street, NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036, telephone (202) 833-9339, fax (202) 833-9434, Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., and Appendix 2), notice is hereby given for a Special Committee 224, Airport Security Access Control Systems (Update to DO-230B):

Agenda

October 20, 2011

- Welcome/Introductions/ Administrative Remarks.
- Review/Approve Summary—Eighth Meeting.
- Proposed Structure Overview.
- Sub Section Workgroup Reports.
- Document Structure Finalization Scheduling.
- Time and Place of Next Meeting.
- Any Other Business.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 19, 2011.

Robert L. Bostiga,

Manager, RTCA Advisory Committee.

[FR Doc. 2011-24635 Filed 9-23-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty Eighth Meeting: RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Joint RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment

DATES: The meeting will be held October 20, 2011 from 9 a.m.—5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street, NW., Suite 910, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC, 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 135: Environmental Conditions and Test Procedures for Airborne Equipment.

The agenda will include:

Thursday, October 20, 2011

- 9 a.m.—5 p.m.
- Chairmen's Opening Remarks, Introductions.
- Approval of Summary from Fifty-Seventh Meeting (RTCA Paper No. 166-11/SC 135-685).
- Review Approved Revised SC135 TOR (Terms of Reference)—Environmental Conditions and Test Procedures for Airborne Equipment—(RTCA Paper No. 067-11/PMC-887).
- Review Proposed User's Guides.
- Review Working Group Activities.
- New or unfinished business.
- Establish Date for Next SC-135 Meeting.

• Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public

may present a written statement to the committee at any time.

Issued in Washington, DC, September 19, 2011.

Robert L. Bostiga,

Manager, RTCA Advisory Committee.

[FR Doc. 2011-24637 Filed 9-23-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, October 4, and Wednesday, October 5, 2011 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at ATCA Conference, Gaylord, National Harbor, 201 Waterfront Street, National Harbor, MD 20745.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Norek, ATPAC Executive Director, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267-9205.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, October 4, and Wednesday, October 5, 2011 from 8:30 a.m. to 5 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson,

members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify Mr. Gary Norek no later than October 2, 2011. Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on September 19, 2011.

Gary A. Norek,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 2011-24641 Filed 9-23-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2000-8089]

Petition for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a modification of an existing waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested, and the petitioner's arguments in favor of relief. Canadian National Railway Company (CN) seeks to modify an existing waiver in Docket Number FRA-2000-8089 on behalf of itself and its U.S. affiliates.

CN is North America's fifth largest railroad; with 20,600 route miles and approximately 22,000 employees in Canada and the United States. It operates the largest rail network in Canada and the only transcontinental network in North America. Within the last 15 years, CN has carried out extremely successful integrations with the Illinois Central, Wisconsin Central, Great Lakes Transportation, and Elgin, Joliet & Eastern rail systems. CN seeks to modify an existing waiver in which FRA has waived compliance with 49 CFR part 231, which specifies the number, location, and dimensional specifications for handholds, ladders, sill steps, uncoupling levers, and handbrakes; and which regulates drawbar height, for CN's use of RoadRailer equipment.

The original CN waiver to operate RoadRailer equipment was issued by FRA on May 23, 2001, and was extended on August 17, 2011. Subsequent to the most recent extension

of the current waiver in force, CN received a request from a customer to extend the number of RoadRailer units handled by its operation. Basically, CN is requesting a modification to the current waiver, which would grant CN the same operational capability and limitations as provided to Norfolk Southern Railway to operate RoadRailer equipment by FRA in Docket Number FRA-2002-11896. Since having the waiver granted in 2001, CN has operated RoadRailer equipment without incident.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket numbers, and may be submitted by any of the following methods:

- **Web Site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 10, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (Volume 65, Number 70; Page 19477), at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on September 19, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011-24574 Filed 9-23-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35520; Docket No. FD 35518; Docket No. FD 35519; Docket No. FD 35521]

The New Brunswick Railway Company—Continuance in Control Exemption—Maine Northern Railway Company; Maine Northern Railway Company—Trackage Rights Exemption—Montreal, Maine & Atlantic Railway, Ltd.; Maine Northern Railway Company—Trackage Rights Exemption—Montreal, Maine & Atlantic Railway, Ltd.; Maine Northern Railway Company—Modified Rail Certificate—in Aroostook and Penobscot Counties, ME

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323-25, for Eastern Maine Railway, a Class III rail common carrier to continue in control of Maine Northern Railway Company.

DATES: EMR's exemption will be effective on October 26, 2011. Petitions for stay must be filed by October 6, 2011, and petitions for reconsideration must be filed by October 17, 2011.

ADDRESSES: An original and 10 copies of all pleadings, referring to the above dockets, must be filed with the Surface Transportation Board, 395 E. Street, SW., Washington, DC 20423-0001. In addition, one copy of all pleadings must be served on petitioners' representative: Karyn A. Booth, Thompson Hine LLP, Suite 800, 1920 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245-0395. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Board granted the exemption by decision served on September 22, 2011.

Board decisions and notices are available on our Web site at: <http://www.stb.dot.gov>.

Decided: September 20, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2011-24653 Filed 9-23-11; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 5) (2011-4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the fourth quarter 2011 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2011 RCAF (Unadjusted) is 1.208. The fourth quarter 2011 RCAF (Adjusted) is 0.533. The fourth quarter 2011 RCAF-5 is 0.506. The Board noted an error in the third quarter 2011 Materials and Supplies Index, which will be accounted for using the first quarter 2012 forecast error calculation.

DATES: *Effective Date:* October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245-0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877-8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, <http://www.stb.dot.gov>. Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238. Assistance for the hearing impaired is available through FIRS at (800) 877-8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Decided: September 20, 2011.

Andrea Pope-Matheson,
Clearance Clerk.

[FR Doc. 2011-24553 Filed 9-23-11; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 21, 2011.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. A copy of the submission may be obtained by contacting the Treasury Department Office Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before October 26, 2011 to be assured of consideration.

Executive Office for Asset Forfeiture (EOAF)

OMB Number: 1505-0152.

Type of Review: Revision a currently approved collection.

Title: Request for Transfer of Property Seized/Forfeited by a Treasury Agency.
Form: TD F 92-22.46.

Abstract: Form TD F 92-22.46 is necessary for the application for receipt of seized assets by State and Local Law Enforcement agencies.

Respondents: State, Local, and Tribal Governments.

Estimated Total Annual Burden Hours: 2,500.

Departmental Office Clearance Officer: Jackie Jackson, Department of the Treasury, EOAF, 740 15th Street, NW., Suite 700, Washington, DC; (202) 622-2755.

OMB Reviewer: Shaguftha Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395-7873.

Dawn D. Wolfgang,
Treasury PRA Clearance Officer.

[FR Doc. 2011-24613 Filed 9-23-11; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of four individuals and 12 entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901-1908, 8 U.S.C. 1182). In addition, OFAC is publishing additions to the identifying information for nine individuals and 10 entities previously designated pursuant to the Kingpin Act.

DATES: The designation by the Director of OFAC of the four individuals and 12 entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622-0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found

to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On September 21, 2011, the Director of OFAC designated four individuals and 12 entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

The list of additional designees is as follows:

Individuals:

1. BARCENAS RIVERA, Mauricio, c/o BIO FORESTAL S.A.S., Medellin, Colombia; c/o C.I. DISERCOM S.A.S., Bogota, Colombia; c/o C.I. METALURGIA EXTRACTIVA DE COLOMBIA S.A.S., Bogota, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A.S., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A.S., Bogota, Colombia; c/o CUBICAFE S.A.S., Bogota, Colombia; c/o DESARROLLO MINERO RESPONSABLE C.I. S.A.S., Bogota, Colombia; c/o FUNDACION SALVA LA SELVA, Bogota, Colombia; c/o GANADERIA LA SORGUITA S.A.S., Medellin, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o LINEA AEREA PUEBLOS AMAZONICOS S.A.S., Bogota, Colombia; c/o PARQUES TEMATICOS S.A.S., Medellin, Colombia; c/o PROMO RAIZ S.A.S., Medellin, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A.S., Bogota, Colombia; Calle 25 No. 35-21, Cali, Colombia; Calle 74 No. 10-33 Apto. 801, Bogota, Colombia; DOB 30 Jun 1977; POB Cali, Colombia; Cedula No. 94508327 (Colombia) (individual) [SDNTK]
2. CASTRO, Jesus Maria, c/o NEGOCIOS INTERNACIONALES DEL ECUADOR NIDEGROUP S.A., Quito, Pichincha, Ecuador; c/o SNACK PARTY, Quito, Pichincha, Ecuador; DOB 20 Nov 1967; alt. DOB 28 Nov 1967; alt. DOB 11 Nov 1967; POB Dolores, Uruguay; Cedula No. 172101469-2 (Ecuador); Passport B716164 (Uruguay); alt. Passport C144880 (Uruguay); alt. Passport 02952296-8 (Uruguay) (individual) [SDNTK]
3. MEJIA ZULUAGA, Omar, c/o AS INVERSIONES S.A., Bogota,

Colombia; c/o C.I. PLANETA COMERCIAL S.A., Bogota, Colombia; c/o CBM DE COLOMBIA S.A., Bogota, Colombia; c/o FEDERAL CAPITAL GROUP, S.A., Panama City, Panama; c/o PRODUCTOS KIBONY S.A.S., Bogota, Colombia; c/o T & T ANDINA S.A., Bogota, Colombia; Carrera 7 No. 62-43 Ap. 802, Bogota, Colombia; Carrera 14A No. 151A-06Ap. 4-104, Bogota, Colombia; Carrera 19A No. 102-70, Bogota, Colombia; DOB 18 Jan 1956; POB Villahermosa, Tolima, Colombia; Cedula No. 19316392 (Colombia) (individual) [SDNTK]

4. URIBE CIFUENTES, Ana Maria, c/o CIFUENTES URIBE Y CIA. S.C.S., Medellin, Colombia; c/o ECOVIVERO EL MATORRAL E.U., Medellin, Colombia; Calle 7 Sur No. 23-91 Apto. 804, Medellin, Colombia; DOB 1 Feb 1980; POB Medellin, Colombia; Cedula No. 43162647 (Colombia) (individual) [SDNTK]

Entities:

1. AS INVERSIONES S.A., Carrera 14A No. 151A-06 T4 104, Bogota, Colombia; NIT # 800224826-0 (Colombia) [SDNTK]
2. C.I. PLANETA COMERCIAL S.A., Carrera 11 No. 67-63 Piso 2, Bogota, Colombia; NIT # 830079228-3 (Colombia) [SDNTK]
3. CBM DE COLOMBIA S.A., Carrera 35A No. 62-32, Bogota, Colombia; NIT # 830072893-1 (Colombia) [SDNTK]
4. COMERCIALIZADORA EMPRESARIAL TEAM BUSINESS S.A., Av. de los Shyris N35-174 y Suecia, Ofic. 508, Quito, Pichincha, Ecuador; RUC # 1792167248001 (Ecuador) [SDNTK]
5. GENETICA DEL SUR S.A., Padron 15001 S. Judicial 9 y 10 Seccion Catastral—Paraje Retamosa, Lavalleja, Uruguay; Cerrito 532 Of. 501, Montevideo, Uruguay; RUT # 215.950.390.012 (Uruguay) [SDNTK]
6. GRUPO MUNDO MARINO, S.A., Panama; Business Registration Document # 383112 (Panama) [SDNTK]
7. INTERNATIONAL GROUP OIRALIH, S.A. DE C.V., Boulevard Interlomas 5 Local W-13, Colonia San Fernando La Herradura, Huixquilucan, Estado de Mexico C.P. 52787, Mexico; R.F.C. IGO0106296K5 (Mexico) [SDNTK]
8. NEGOCIOS INTERNACIONALES DEL ECUADOR NIDEGROUP S.A., Calle B, Lote 27 y Calle A, Quito, Pichincha, Ecuador; RUC # 1792138884001 (Ecuador) [SDNTK]

9. PRODUCTOS KIBONY S.A.S., Carrera 35A No. 62-32, Bogota, Colombia; NIT # 830052461-6 (Colombia) [SDNTK]
10. R D I S.A., Calle 64A No. 32-52, Bogota, Colombia; NIT # 830054366-3 (Colombia) [SDNTK]
11. SNACK PARTY, Los Vinedos 19 y Venezuela, Quito, Pichincha, Ecuador; RUC # 1721014692001 (Ecuador) [SDNTK]
12. T & T ANDINA S.A., Carrera 69D No. 31-10, Bogota, Colombia; NIT # 830089233-3 (Colombia) [SDNTK]

In addition, OFAC has made additions to the identifying information for the following nine individuals and 10 entities previously designated pursuant to the Kingpin Act:

- Individuals:
1. BASTO DELGADO, Irma Mery, c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o CUBICAFE S.A., Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; DOB 5 Apr 1967; Cedula No. 20904590 (Colombia) (individual) [SDNTK]
 2. CIFUENTES VILLA, Hector Mario, c/o C.I. GLOBAL INVESTMENTS S.A., Medellin, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o CUBI CAFE CLICK CUBE MEXICO, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o INVERSIONES CIFUENTES Y CIA. S. EN C., Medellin, Colombia; c/o ROBLE DE MINAS S.A., Medellin, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; DOB 28 Nov 1964; POB Medellin, Colombia; Cedula No. 71653530 (Colombia); Passport AG048125 (Colombia) (individual) [SDNTK]
 3. CIFUENTES VILLA, Jorge Milton (a.k.a. LOPEZ SALAZAR, Elkin de Jesus), c/o BIO FORESTAL S.A., Medellin, Colombia; c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o C.I. METALURGIA EXTRACTIVA DE COLOMBIA S.A.S., Bogota, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota,

- Colombia; c/o CUBICAFE S.A., Bogota, Colombia; c/o CUBI CAFE CLICK CUBE MEXICO, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o DESARROLLO MINERO RESPONSIBLE C.I. S.A.S., Bogota, Colombia; c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o FUNDACION OKCOFFEE COLOMBIA, Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o FUNDACION SALVA LA SELVA, Bogota, Colombia; c/o GESTORES DEL ECUADOR GESTORUM S.A., Quito, Ecuador; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o INVERSIONES CIFUENTES Y CIA. S. EN C., Medellin, Colombia; c/o LE CLAUDE, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o LINEA AEREA PUEBLOS AMAZONICOS S.A.S., Bogota, Colombia; c/o OPERADORA NUEVA GRANADA, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o PARQUES TEMATICOS S.A., Medellin, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; c/o RED MUNDIAL INMOBILIARIA, S.A. DE C.V., Huixquilucan, Estado de Mexico, Mexico; c/o GANADERIA LA SORGUITA S.A., Medellin, Colombia; Avenida Carrera 9 No. 113-52 Of. 401, Bogota, Colombia; Calle 6 No. 33-29 Apto. 801, Medellin, Colombia; Calle 74 No. 10-33 Apto. 806, Bogota, Colombia; Calle Blas Pascal No. 106, Colonia Los Morales, Delegacion Miguel Hidalgo, Mexico City, Distrito Federal C.P. 11510, Mexico; Calle Eje J No. 999 Pasaje Santa Fe, Departamento No. 301, Colonia Ciudad Santa Fe, Delegacion Alvaro Obregon, Mexico City, Distrito Federal C.P. 01210, Mexico; Camino del Remanso No. 80 Interior 2, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Camino del Remanso, No. 80 A, Planta Baja, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Carrera 8 No. 10-56 Of. 201, Cali, Colombia; Carrera 68D No. 25-10, Lote 41 E/S Terminal, Bogota, Colombia; Carrera 68D No. 25B-86 Of. 504, Bogota, Colombia; Miguel Schultz No. 127, Colonia San Rafael, Delegacion Cuauhtemoc, Mexico City, Distrito Federal C.P. 06470, Mexico; DOB 13 May 1965; alt. DOB 13 Apr 1968; POB Medellin, Colombia; alt. POB Marinilla, Antioquia, Colombia; C.U.R.P. CIVJ650513HNEFLR06 (Mexico); Cedula No. 7548733 (Colombia); alt. Cedula No. 70163752 (Colombia); alt. Cedula No. 172489729-1 (Ecuador); Matricula Mercantil No 181301-1 Cali (Colombia); alt. Matricula Mercantil No 405885 Bogota (Colombia); Passport AL720622 (Colombia); R.F.C. CIVJ650513LJA (Mexico) (individual) [SDNTK]
4. GALLEGO MARIN, Fabian Rodrigo, c/o IGA LTDA., Itagui, Antioquia, Colombia; c/o RUTA 33 MOTOCICLETAS Y ACCESORIOS LTDA., Medellin, Colombia; Calle 79A Sur No. 46-53, Sabaneta, Antioquia, Colombia; DOB 25 Aug 1967; Cedula No. 98522962 (Colombia) (individual) [SDNTK]
5. GOMEZ ORTIZ, David, c/o GESTORES DEL ECUADOR GESTORUM S.A., Quito, Ecuador; Avenida de los Estudiantes No. 21-54, Pasto, Narino, Colombia; Calle 20 No. 21-54, Pasto, Narino, Colombia; DOB 14 Aug 1977; POB Pasto, Narino, Colombia; Cedula No. 98398142 (Colombia); Cedula No. 171984116-3 (Ecuador) (individual) [SDNTK]
6. LONDONO RAMIREZ, Juan Pablo Antonio, c/o INTERNETSTATIONS E.U., Medellin, Colombia; c/o MONEDEUX EUROPA S.L., Madrid, Spain; c/o MONEDEUX FINANCIAL SERVICES COLOMBIA LTDA., Bogota, Colombia; c/o MONEDEUX LATIN AMERICA, S. DE R.L. DE C.V., Mexico City, Distrito Federal, Mexico; c/o MONEDEUX FINANCIAL SERVICES NORTH AMERICA, INC., Miami, FL, United States; c/o MONEDEUX INTERNATIONAL SERVICES INC., Panama City, Panama; Carrera 78 No. 34-40, Medellin, Colombia; DOB 15 Feb 1965; POB Manizales, Colombia; Cedula No. 10267976 (Colombia); Passport A1314893 (Colombia); Passport A1847440 (Colombia); Passport CC10267976 (Colombia); R.F.C. LORJ650215DH1 (Mexico) (individual) [SDNTK]
7. NICHOLLS EASTMAN, Winston, c/o CROSS WINDS, S.A., Panama City, Panama; c/o FEDERAL CAPITAL GROUP, S.A., Panama City, Panama; c/o LINEAS AEREAS ANDINAS LINCANDISA S.A., Quito, Ecuador; DOB 27 Mar 1943; POB Manizales, Colombia; Cedula No. 5199571 (Colombia); Residency Number 172191348-9 (Ecuador) (individual) [SDNTK]
8. RESTREPO ZAPATA, Milvia Yaneth (a.k.a. RESTREPO ZAPATA, Milvia Yaneth), c/o BIO FORESTAL S.A., Medellin, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o FUNDACION OKCOFFEE COLOMBIA, Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; Carrera 112 GT No. 86B-60, Bogota, Colombia; DOB 13 Dec 1973; Cedula No. 43825354 (Colombia) (individual) [SDNTK]
9. SANCHEZ PUENTES, Yenny Mabel, c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; Calle 140 No. 6-30 Int. 9 Ap. 201, Bogota, Colombia; Calle 187 54-55 Int. 21 Ap. 201, Bogota, Colombia; DOB 19 Dec 1967; POB Otanche, Boyaca, Colombia; Cedula No. 51908699 (Colombia); Passport AH982263 (Colombia) (individual) [SDNTK]

Entities:

1. BIO FORESTAL S.A. (a.k.a. BIOFORESTAL S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Calle 7 Sur No. 42-70 Of. 1205, Medellin, Colombia; Finca Casa Blanca, Arboletes y Necoli, Antioquia, Colombia; Finca La Cana, Cordoba, Colombia; Finca San Luis, Monteria, Cordoba, Colombia; Finca Toldas, Guarne, Antioquia, Colombia; La Sorguita, Jerico, Antioquia, Colombia; NIT # 811038709-1 (Colombia) [SDNTK]
2. C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A. (a.k.a. C.I. DISERCOM S.A.; a.k.a. DISERCOM S.A.; f.k.a. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113-52 Ofc. 401, Bogota, Colombia; Carrera 13 No. 29-21, Manzana 1 Oficina 401, Bogota, Colombia; Carrera 13 No. 29-21, Manzana 1 Oficina 401, Bogota, Colombia; NIT # 830046009-5 (Colombia) [SDNTK]
3. C.I. OKCOFFEE COLOMBIA S.A., Autopista Bogota-Medellin Km. 7,

- Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113-52 Ofc. 402, Bogota, Colombia; NIT # 830124959-1 (Colombia) [SDNTK]
4. C.I. OKCOFFEE INTERNATIONAL S.A., Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113-52 Ofc. 401, Bogota, Colombia; NIT # 900060391-6 (Colombia) [SDNTK]
 5. CUBICAFE S.A. (a.k.a. OK COFFEE), Avenida Carrera 9 No. 113-52 Ofc. 401, Bogota, Colombia; Calle 65 Bis No. 89A-73, Bogota, Colombia; Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; NIT # 830136426-1 (Colombia) [SDNTK]
 6. GANADERIA LA SORGUITA S.A. (a.k.a. LA SORGUITA S.A.), Calle 16 Sur No. 46A-49 Piso 6, Medellin, Colombia; NIT # 800220730-4 (Colombia) [SDNTK]
 7. PARQUES TEMATICOS S.A. (a.k.a. HACIENDA HOTEL EL INDIOS), Calle 16C Sur No. 42-70, Apto. 502, Medellin, Colombia; Vereda la Playita, Barbosa, Antioquia, Colombia; NIT # 811035877-5 (Colombia) [SDNTK]
 8. PROMO RAIZ S.A., Calle 7 Sur No. 42-70 Of. 1205, Medellin, Colombia; NIT # 811035904-6 (Colombia) [SDNTK]
 9. ROBLE DE MINAS S.A., Calle 18B Sur No. 36-35 Apto. 1603, Medellin, Colombia; Calle 75 Carrera 77E, Medellin, Colombia; NIT # 811043722-6 (Colombia) [SDNTK]
 10. UNION DE CONSTRUCTORES CONUSA S.A., Apartamentos Life, Medellin, Colombia; Avenida Carrera 9 No. 113-52 Ofc. 401, Bogota, Colombia; Boca Salinas, Santa Marta, Colombia; Calle 74 No. 10-33, Mirador del Moderno, Bogota, Colombia; Carrera 68D No. 258-86 Of. 504 Torre Central, Bogota, Colombia; Haciendas de Potrerito, Cali, Colombia; Isla Pavito, Cartagena, Colombia; Transversal 1B Este No. 7A-20 Sur, Buenos Aires Etapa II, Bogota, Colombia; NIT # 800226431-4 (Colombia) [SDNTK]
- The listings for these nine individuals and ten entities now appear as follows:
Individuals:
1. BASTO DELGADO, Irma Mery, c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o CUBICAFE S.A., Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; c/o R D I S.A., Bogota, Colombia; DOB 5 Apr 1967; Cedula No. 20904590 (Colombia) (individual) [SDNTK]
 2. CIFUENTES VILLA, Hector Mario, c/o C.I. GLOBAL INVESTMENTS S.A., Medellin, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o CUBI CAFE CLICK CUBE MEXICO, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o GENETICA DEL SUR S.A., Lavalleya, Uruguay; c/o INVERSIONES CIFUENTES Y CIA. S. EN C., Medellin, Colombia; c/o ROBLE DE MINAS S.A., Medellin, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; DOB 28 Nov 1964; POB Medellin, Colombia; Cedula No. 71653530 (Colombia); Passport AG048125 (Colombia) (individual) [SDNTK]
 3. CIFUENTES VILLA, Jorge Milton (a.k.a. LOPEZ SALAZAR, Elkin de Jesus), c/o BIO FORESTAL S.A., Medellin, Colombia; c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o C.I. METALURGIA EXTRACTIVA DE COLOMBIA S.A.S., Bogota, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o CUBICAFE S.A., Bogota, Colombia; c/o CUBI CAFE CLICK CUBE MEXICO, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o DESARROLLO MINERO RESPONSIBLE C.I. S.A.S., Bogota, Colombia; c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o FUNDACION OKCOFFEE COLOMBIA, Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o FUNDACION SALVA LA SELVA, Bogota, Colombia; c/o GESTORES DEL ECUADOR GESTORUM S.A., Quito, Ecuador; c/o GRUPO MUNDO MARINO, S.A., Panama, c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o INVERSIONES CIFUENTES Y CIA. S. EN C., Medellin, Colombia; c/o LE CLAUDE, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o LINEA AEREA PUEBLOS AMAZONICOS S.A.S., Bogota, Colombia; c/o OPERADORA NUEVA GRANADA, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o PARQUES TEMATICOS S.A., Medellin, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; c/o R D I S.A., Bogota, Colombia; c/o RED MUNDIAL INMOBILIARIA, S.A. DE C.V., Huixquilucan, Estado de Mexico, Mexico; c/o GANADERIA LA SORGUITA S.A., Medellin, Colombia; Avenida Carrera 9 No. 113-52 Of. 401, Bogota, Colombia; Calle 6 No. 33-29 Apto. 801, Medellin, Colombia; Calle 74 No. 10-33 Apto. 806, Bogota, Colombia; Calle Blas Pascal No. 106, Colonia Los Morales, Delegacion Miguel Hidalgo, Mexico City, Distrito Federal C.P. 11510, Mexico; Calle Eje J No. 999 Pasaje Santa Fe, Departamento No. 301, Colonia Ciudad Santa Fe, Delegacion Alvaro Obregon, Mexico City, Distrito Federal C.P. 01210, Mexico; Camino del Remanso No. 80 Interior 2, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Camino del Remanso, No. 80 A, Planta Baja, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Carrera 8 No. 10-56 Of. 201, Cali, Colombia; Carrera 68D No. 25-10, Lote 41 E/S Terminal, Bogota, Colombia; Carrera 68D No. 25B-86 Of. 504, Bogota, Colombia; Miguel Schultz No. 127, Colonia San Rafael, Delegacion Cuauhtemoc, Mexico City, Distrito Federal C.P. 06470, Mexico; DOB 13 May 1965; alt. DOB 13 Apr 1968; POB Medellin, Colombia; alt. POB Marinilla, Antioquia, Colombia; C.U.R.P. CIVJ650513HNEFLR06 (Mexico); Cedula No. 7548733 (Colombia); alt. Cedula No. 70163752 (Colombia); alt. Cedula No. 172489729-1 (Ecuador); Matricula Mercantil No 181301-1 Cali (Colombia); alt. Matricula Mercantil No 405885 Bogota (Colombia); Passport AL720622 (Colombia); R.F.C. CIVJ650513LJA (Mexico) (individual) [SDNTK]
 4. GALLEGO MARIN, Fabian Rodrigo, c/o IGA LTDA., Itagui, Antioquia, Colombia; c/o INTERNATIONAL GROUP OIRALIH, S.A. DE C.V., Huixquilucan, Estado de Mexico, Mexico; c/o NEGOCIOS INTERNACIONALES DEL ECUADOR NIDEGROUP S.A.,

- Quito, Pichincha, Ecuador; c/o RUTA 33 MOTOCICLETAS Y ACCESORIOS LTDA., Medellin, Colombia; Avenida Homero No. 136, Interior 10, Colonia Chapultepec Morales, Delegacion Miguel Hidalgo, Mexico City, Distrito Federal, Mexico; Calle 79A Sur No. 46-53, Sabaneta, Antioquia, Colombia; Calle Rio Elba No. 56, Interior 6, Colonia Cuauhtemoc, Delegacion Cuauhtemoc, Mexico City, Distrito Federal C.P. 06170, Mexico; DOB 25 Aug 1967; Cedula No. 98522962 (Colombia) (individual) [SDNTK]
5. GOMEZ ORTIZ, David, c/o COMERCIALIZADORA EMPRESARIAL TEAM BUSINESS S.A., Quito, Pichincha, Ecuador; c/o GESTORES DEL ECUADOR GESTORUM S.A., Quito, Ecuador; Avenida de los Estudiantes No. 21-54, Pasto, Narino, Colombia; Calle 20 No. 21-54, Pasto, Narino, Colombia; DOB 14 Aug 1977; POB Pasto, Narino, Colombia; Cedula No. 98398142 (Colombia); Cedula No. 171984116-3 (Ecuador) (individual) [SDNTK]
6. LONDONO RAMIREZ, Juan Pablo Antonio, c/o INTERNETSTATIONS E.U., Medellin, Colombia; c/o MONEDUEX EUROPA S.L., Madrid, Spain; c/o MONEDUEX FINANCIAL SERVICES COLOMBIA LTDA., Bogota, Colombia; c/o MONEDUEX LATIN AMERICA, S. DE R.L. DE C.V., Mexico City, Distrito Federal, Mexico; c/o MONEDUEX FINANCIAL SERVICES NORTH AMERICA, INC., Miami, FL, United States; c/o MONEDUEX INTERNATIONAL SERVICES INC., Panama City, Panama; Carrera 78 No. 34-40, Medellin, Colombia; DOB 15 Feb 1965; POB Manizales, Colombia; Cedula No. 10267976 (Colombia); Passport AI314893 (Colombia); Passport AJ847440 (Colombia); Passport CC10267976 (Colombia); N.I.E. X-09552581-Z (Spain); R.F.C. LORJ650215DH1 (Mexico) (individual) [SDNTK]
7. NICHOLLS EASTMAN, Winston, c/o COMERCIALIZADORA EMPRESARIAL TEAM BUSINESS S.A., Quito, Pichincha, Ecuador; c/o CROSS WINDS, S.A., Panama City, Panama; c/o FEDERAL CAPITAL GROUP, S.A., Panama City, Panama; c/o LINEAS AEREAS ANDINAS LINCANDISA S.A., Quito, Ecuador; DOB 27 Mar 1943; POB Manizales, Colombia; Cedula No. 5199571 (Colombia); Residency Number 172191348-9 (Ecuador) (individual) [SDNTK]
8. RESTREPO ZAPATA, Milvia Yaneth (a.k.a. RESTREPO ZAPATA, Milvia Janeth), c/o BIO FORESTAL S.A., Medellin, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o FUNDACION OKCOFFEE COLOMBIA, Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; c/o R D I S.A., Bogota, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; Carrera 112 GT No. 86B-60, Bogota, Colombia; DOB 13 Dec 1973; Cedula No. 43825354 (Colombia) (individual) [SDNTK]
9. SANCHEZ PUENTES, Yenny Mabel, c/o CBM DE COLOMBIA S.A., Bogota, Colombia; c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o R D I S.A., Bogota, Colombia; Calle 140 No. 6-30 Int. 9 Ap. 201, Bogota, Colombia; Calle 187 54-55 Int. 21 Ap. 201, Bogota, Colombia; DOB 19 Dec 1967; POB Otanche, Boyaca, Colombia; Cedula No. 51908699 (Colombia); Passport AH982263 (Colombia) (individual) [SDNTK]
- Entities:
1. BIO FORESTAL S.A.S. (f.k.a. BIOFORESTAL S.A.; f.k.a. BIO FORESTAL S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Calle 7 Sur No. 42-70 Of. 1205, Medellin, Colombia; Finca Casa Blanca, Arboletes y Necoli, Antioquia, Colombia; Finca La Cana, Cordoba, Colombia; Finca San Luis, Monteria, Cordoba, Colombia; Finca Toldas, Guarne, Antioquia, Colombia; La Sorguita, Jerico, Antioquia, Colombia; NIT # 811038709-1 (Colombia) [SDNTK]
2. C.I. DISERCOM S.A.S. (f.k.a. C.I. DISERCOM S.A.; f.k.a. DISERCOM S.A.; f.k.a. DISTRIBUIDORA DE SERVICIOS Y COMBUSTIBLES S.A.; f.k.a. C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113-52 Ofc. 401, Bogota, Colombia; Carrera 13 No. 29-21, Manzana 1 Oficina 401, Bogota, Colombia; NIT # 830046009-5 (Colombia) [SDNTK]
3. C.I. OKCOFFEE COLOMBIA S.A.S. (f.k.a. C.I. OKCOFFEE COLOMBIA S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113-52 Ofc. 402, Bogota, Colombia; NIT # 830124959-1 (Colombia) [SDNTK]
4. C.I. OKCOFFEE INTERNATIONAL S.A.S. (f.k.a. C.I. OKCOFFEE INTERNATIONAL S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113-52 Ofc. 401, Bogota, Colombia; NIT # 900060391-6 (Colombia) [SDNTK]
5. CUBICAFE S.A.S. (a.k.a. OK COFFEE; f.k.a. CUBICAFE S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113-52 Ofc. 401, Bogota, Colombia; Calle 65 Bis No. 89A-73, Bogota, Colombia; NIT # 830136426-1 (Colombia) [SDNTK]
6. GANADERIA LA SORGUITA S.A.S. (f.k.a. LA SORGUITA S.A.; f.k.a. GANADERIA LA SORGUITA S.A.), Calle 16 Sur No. 46A-49 Piso 6, Medellin, Colombia; NIT # 800220730-4 (Colombia) [SDNTK]
7. PARQUES TEMATICOS S.A.S. (a.k.a. HACIENDA HOTEL EL INDIJO; f.k.a. PARQUES TEMATICOS S.A.), Calle 16C Sur No. 42-70, Apto. 502, Medellin, Colombia; Vereda la Playita, Barbosa, Antioquia, Colombia; NIT # 811035877-5 (Colombia) [SDNTK]
8. PROMO RAIZ S.A.S. (f.k.a. PROMO RAIZ S.A.), Calle 7 Sur No. 42-70 Of. 1205, Medellin, Colombia; NIT # 811035904-6 (Colombia) [SDNTK]
9. ROBLE DE MINAS S.A.S. (f.k.a. ROBLE DE MINAS S.A.), Calle 18B Sur No. 36-35 Apto. 1603, Medellin, Colombia; Calle 75 Carrera 77E, Medellin, Colombia; NIT # 811043722-6 (Colombia) [SDNTK]
10. UNION DE CONSTRUCTORES CONUSA S.A.S. (f.k.a. UNION DE CONSTRUCTORES CONUSA S.A.), Apartamentos Life, Medellin, Colombia; Avenida Carrera 9 No. 113-52 Ofc. 401, Bogota, Colombia; Boca Salinas, Santa Marta, Colombia; Calle 74 No. 10-33, Mirador del Moderno, Bogota, Colombia; Carrera 68D No. 258-86 Of. 504 Torre Central, Bogota, Colombia; Haciendas de Potrero, Cali, Colombia; Isla Pavito,

Cartagena, Colombia; Transversal 1B Este No. 7A-20 Sur, Buenos Aires Etapa II, Bogota, Colombia; NIT # 800226431-4 (Colombia) [SDNTK]

Dated: September 21, 2011.

Adam J. Szubin,
Director, Office of Foreign Assets Control.
[FR Doc. 2011-24682 Filed 9-23-11; 8:45 am]
BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Addition to the Identifying Information for an Individual Previously Designated Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing an addition to the identifying information for an individual who was previously designated pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers" (the "Order").

DATES: The addition by the Director of OFAC to the identifying information for an individual who was previously designated pursuant to the Order is effective on September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treasury.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622-0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706), issued the Order. In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia, or materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On September 21, 2011, the Director of OFAC, made an addition to the identifying information for the following individual who was previously designated pursuant to the Order:

GRAJALES PUENTES, Diana Carolina, c/o AGRONILLO S.A., Toro, Valle, Colombia; c/o CITICAR LTDA., La Union, Valle, Colombia; c/o DOXA S.A., La Union, Valle, Colombia; c/o FRUTAS DE LA COSTA S.A., Malambo, Atlantico, Colombia; c/o HEBRON S.A., Tulua, Valle, Colombia; c/o INDUSTRIAS DEL ESPIRITU SANTO S.A., Malambo, Atlantico, Colombia; c/o JOSAFAT S.A., Tulua, Valle, Colombia; c/o SALIM S.A., La Union, Valle, Colombia; Transversal 13A No. 123-10 Int. 2 apt. 203, Bogota, Colombia; DOB 15 Mar 1979; POB La Victoria, Valle, Colombia; Cedula No. 52455790 (Colombia) (individual) [SDNT]

The listing now appears as follows: GRAJALES PUENTES, Diana Carolina, c/o AGRONILLO S.A., Toro, Valle, Colombia; c/o C.I. PLANETA COMERCIAL S.A., Bogota, Colombia; c/o CITICAR LTDA., La Union, Valle, Colombia; c/o DOXA S.A., La Union, Valle, Colombia; c/o FRUTAS DE LA COSTA S.A., Malambo, Atlantico, Colombia; c/o HEBRON S.A., Tulua, Valle, Colombia; c/o INDUSTRIAS DEL ESPIRITU SANTO S.A., Malambo, Atlantico, Colombia; c/o JOSAFAT S.A., Tulua, Valle, Colombia; c/o SALIM S.A., La Union, Valle, Colombia; Transversal 13A No.

123-10 Int. 2 apt. 203, Bogota, Colombia; DOB 15 Mar 1979; POB La Victoria, Valle, Colombia; Cedula No. 52455790 (Colombia) (individual) [SDNT]

Dated: September 21, 2011.

Adam J. Szubin,
Director, Office of Foreign Assets Control.
[FR Doc. 2011-24678 Filed 9-23-11; 8:45 am]
BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Three Individuals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of three newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designations by the Director of OFAC of the three individuals identified in this notice, pursuant to Executive Order 13224, are effective on September 7, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701-1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the

Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with

foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On September 7, 2011, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, three individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. AL-LIBI, Abu Yahya (a.k.a. ABU BAKAR, Mohammad Hassan; a.k.a. AL SAHRAWI, Abu Yahya Yunis; a.k.a. AL-LIBI, Muhammad Hasan; a.k.a. QA'ID, Hasan; a.k.a. QA'ID, Hasan Muhammad Abu Bakr; a.k.a. QAYED, Muhammad Hassan; a.k.a. RASHID, Abu Yunus; a.k.a. SHEIKH YAHYA, Abu Yahya); DOB 1963; POB

Libya; nationality Libya (individual) [SDGT] .

2. KHAN, Mustafa Hajji Muhammad (a.k.a. AL-MADANI, Abu Gharib; a.k.a. GHUL, Hassan; a.k.a. GUL, Hasan; a.k.a. GUL, Hassan; a.k.a. MAHMUD, Khalid; a.k.a. MUHAMMAD, Mustafa; a.k.a. SHAHJI, Ahmad; a.k.a. "ABU-SHAIMA"; a.k.a. "ABU-SHAYMA"); DOB Aug 1977; alt. DOB Sep 1977; alt. DOB 1976; POB Madinah, Saudi Arabia; alt. POB Sangrar, Sindh Province, Pakistan; nationality Pakistan; alt. nationality Saudi Arabia (individual) [SDGT] .
3. SALIM, 'Abd al-Rahman Ould Muhammad al-Husayn Ould Muhammad (a.k.a. GHADER, El Hadj Ould Abdel; a.k.a. JELIL, Youssef Ould Abdel; a.k.a. KHADER, Abdel; a.k.a. SALEM, Abdarrahmane Ould Mohamed el Houcein Ould Mohamed; a.k.a. SALEM, Mohamed; a.k.a. SOULEIMANE, Abou; a.k.a. "AL-MAURITANI, Sheikh Yunis"; a.k.a. "AL-MAURITANI, Yunis"; a.k.a. "AL-MAURITANI, Yunis"; a.k.a. "CHINGHEITY"; a.k.a. "THE MAURITANIAN, Salih"; a.k.a. "THE MAURITANIAN, Shaykh Yunis"); DOB 1981; POB Saudi Arabia; nationality Mauritania (individual) [SDGT] .

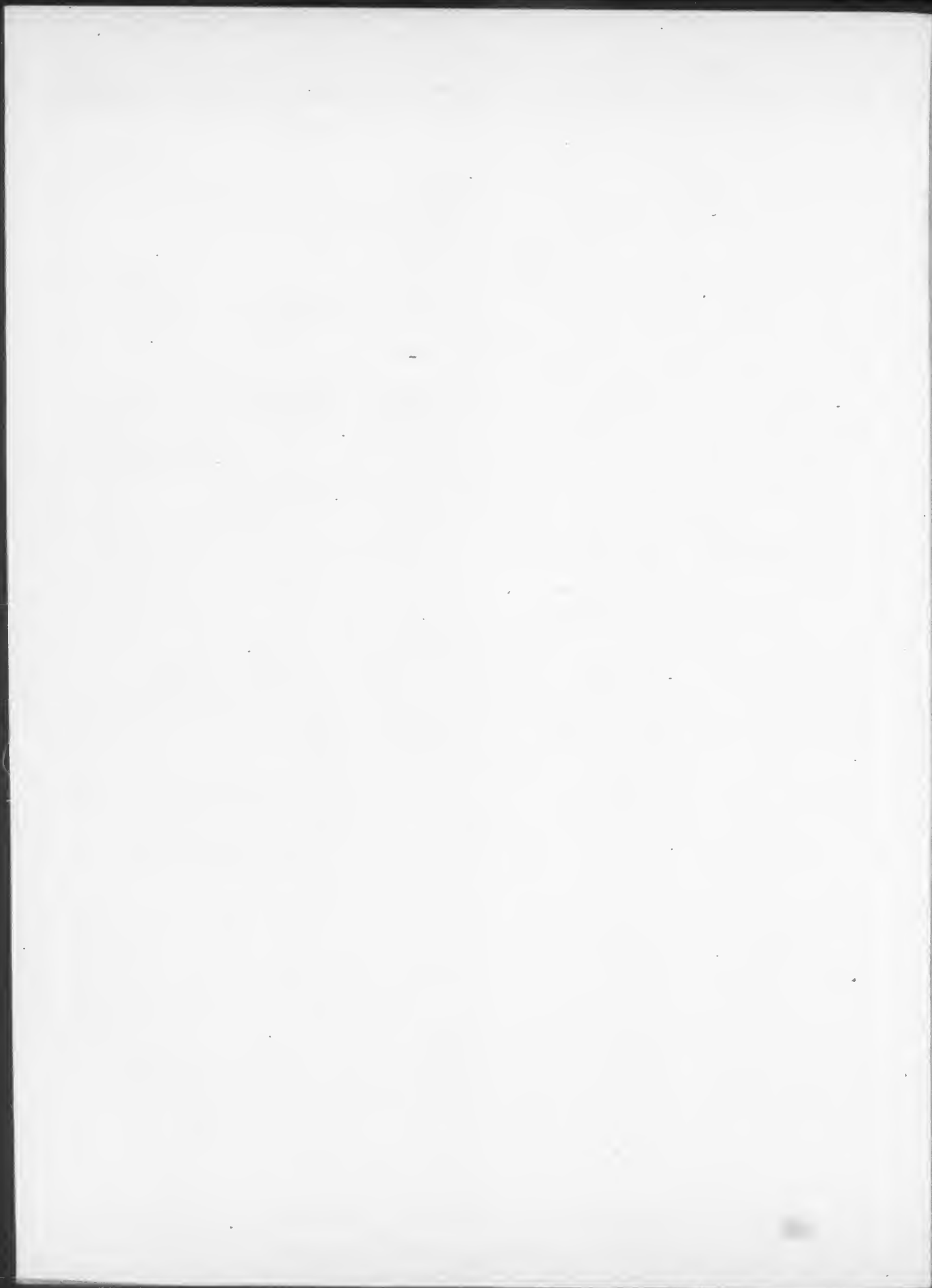
Dated: September 7, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011-24680 Filed 9-23-11; 8:45 am]

BILLING CODE 4810-AL-P





FEDERAL REGISTER

Vol. 76

Monday,

No. 186

September 26, 2011

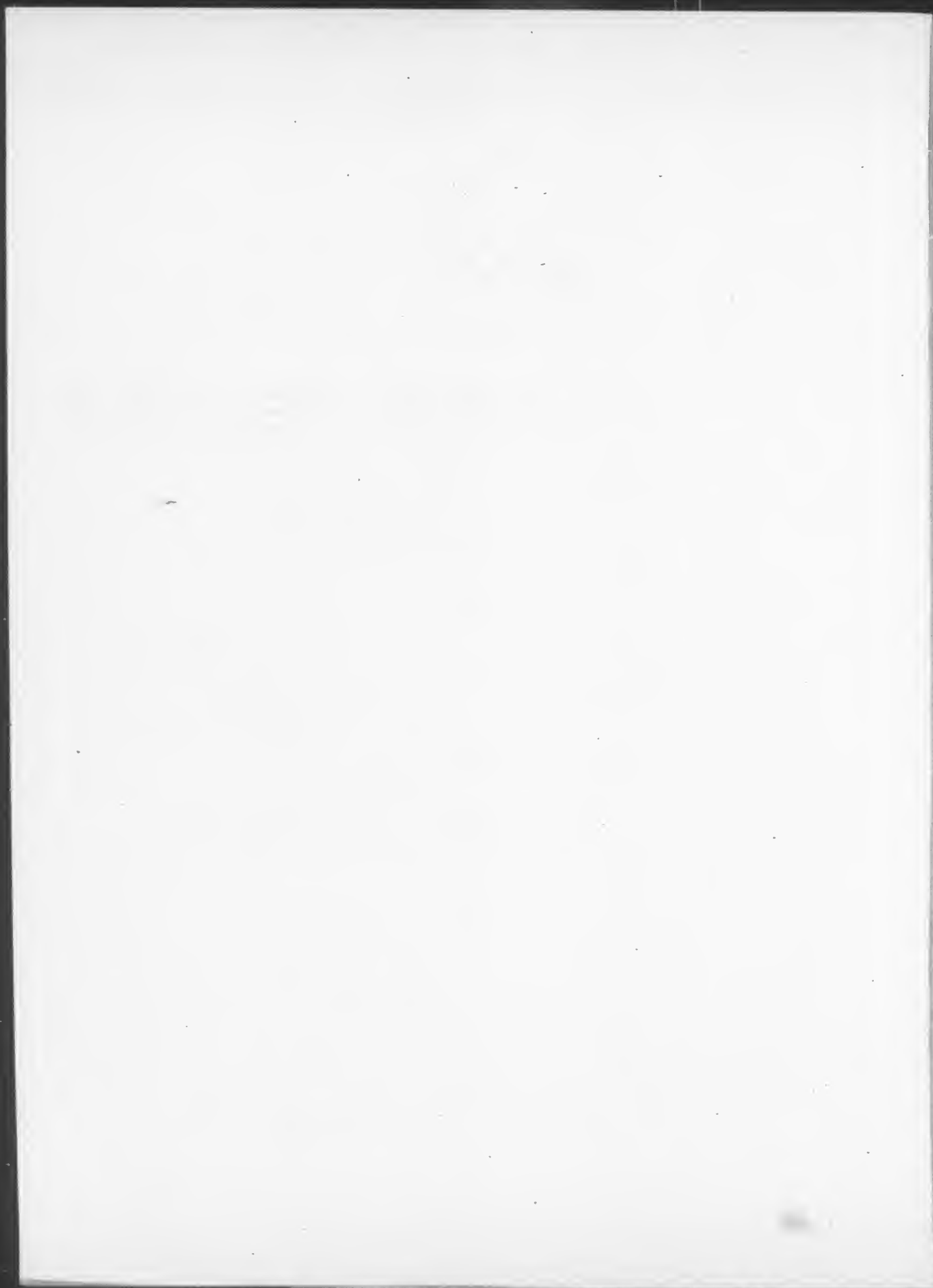
Part II

The President

Presidential Determination No. 2011-14 of August 30, 2011

Presidential Determination No. 2011-16 of September 15, 2011

Proclamation 8718—National Hispanic-Serving Institutions Week, 2011



Federal Register

Vol. 76, No. 186

Monday, September 26, 2011

Presidential Documents

Title 3—

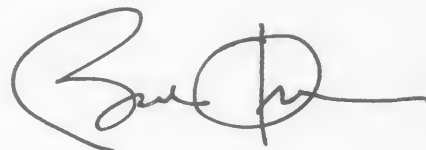
Presidential Determination No. 2011-14 of August 30, 2011

The President

Waiver of Restriction on Providing Funds to the Palestinian Authority**Memorandum for the Secretary of State**

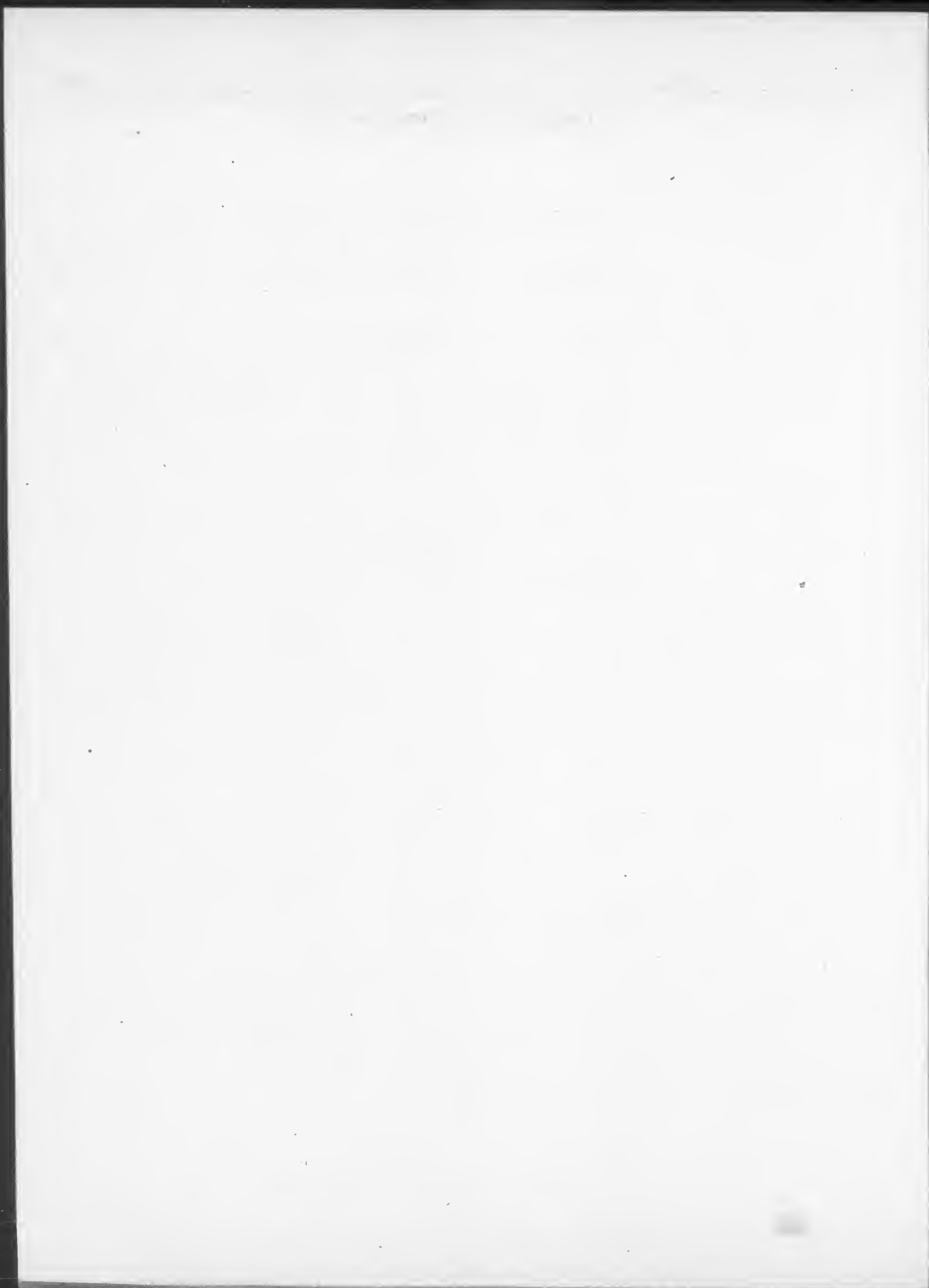
By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7040(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Public Law 111-117), as carried forward by the Full Year Continuing Appropriations Act, 2011 (Division B, Public Law 112-10), as enacted on April 15, 2011 (together, the "Act"), I hereby certify that it is important to the national security interests of the United States to waive the provisions of section 7040(a) of the Act, in order to provide funds appropriated to carry out Chapter 4 of Part II of the Foreign Assistance Act, as amended, to the Palestinian Authority.

You are directed to transmit this determination to the Congress, with a report pursuant to section 7040(d) of the Act, and to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 30, 2011

[FR Doc. 2011-24886
Filed 9-23-11; 11:15 am]
Billing code 4710-10-P



Presidential Documents

Presidential Determination No. 2011-16 of September 15, 2011

Presidential Determination on Major Illicit Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2012

Memorandum for the Secretary of State

Pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228)(FRAA), I hereby identify the following countries as major drug transit or major illicit drug producing countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.

A country's presence on the Majors List is not necessarily an adverse reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or drug producing country set forth in section 481(e)(2) and (5) of the Foreign Assistance Act of 1961, as amended (FAA), one of the reasons that major drug transit or illicit drug producing countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs to transit or be produced despite the concerned government's most assiduous narcotics control law enforcement measures.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia, Burma, and Venezuela as countries that have failed demonstrably during the previous 12 months to make substantial efforts to adhere to their obligations under international counternarcotics agreements and take the measures set forth in section 489(a)(1) of the FAA. Accompanying this report are justifications for the determinations on Bolivia, Burma, and Venezuela, as required by section 706(2)(B).

I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that support for programs to aid Bolivia and Venezuela are vital to the national interests of the United States.

Afghanistan remains the world's largest producer of opium poppy and a major source of heroin. Primary trafficking routes from Afghanistan, where poppy cultivation is still mostly confined to the southern and western provinces, are through Iran to Turkey and Western Europe; through Pakistan to Africa, Asia, and the Middle East; and through Central Asia to the Russian Federation.

Helmand Province remains the largest grower of opium poppy in Afghanistan, but the Provincial Government's innovative Food Zone program, which provides farmers with wheat seed and fertilizer in exchange for a pledge not to grow poppy, coupled with credible law enforcement, has reduced Helmand's poppy cultivation by a third, to 69,883 hectares in 2009 and even further to 65,043 hectares in 2010. The U.S.-funded Governor Led Eradication (GLE) program has demonstrated progress in Helmand with 2,111 hectares eradicated by the end of May 2011. To date during 2011, a total of 3,827 hectares of GLE has been verified in 17 provinces throughout the country, an increase of more than 45 percent in eradication over the same time last year.

Although the amount of opium poppy cultivated in Pakistan is much less than Afghanistan, the country continues to qualify as a major drug producing

country, with an estimated 1,700 hectares of opium poppy under cultivation. The country also remains a major transit country for opiates and hashish for markets around the world and is a transit country for precursor chemicals illegally smuggled to Afghanistan, where they are used to process heroin. Bilateral cooperation between Pakistan and the United States continues to support Pakistan's goal of returning to poppy-free status. United States Government support focuses especially on upgrading the institutional capacity of Pakistan's law enforcement agencies.

A number of indicators qualify the addition of El Salvador and Belize to the Majors List along with the remainder of Central American countries on the isthmus connecting South America to North America.

El Salvador, located between Guatemala and Nicaragua along the Pacific coastline and sharing an eastern border with Honduras, is subject to a number of factors making it vulnerable to the drug trade flowing to the United States from South America. The International Narcotics Control Board describes El Salvador as part of the so-called "northern triangle" with Guatemala and Honduras where "national gangs are forming alliances with international criminal syndicates." According to the most recent U.S. interagency assessment of cocaine flows, the amount of this illicit substance passing through El Salvador destined directly for the United States was estimated at 4 metric tons in 2009.

The most recent U.S. assessment for Belize estimates the flow of drugs destined for the United States through this Central American country on the Caribbean coast at about 10 metric tons. Belize's vulnerability as a south-north avenue for the illegal narcotics trade is also demonstrated by recent drug and weapons seizures in Mexico along the border it shares with Belize. United States officials also report that drug control observers in Belize are increasingly concerned about the presence of drug trafficking organizations, including Los Zetas of Mexico, in the country's border areas and in coastal ports.

Considering the Central American region as a whole, the United States Government estimates that as much as 90 percent of some 700 metric tons of cocaine shipped annually from Colombia and other producing nations intended for the U.S. markets passes through the countries of Central America. This situation is an important element prompting the Central American Citizen Security Partnership, which I announced in March 2011. Through this partnership, the United States is working to refocus the impact of assistance through the Central American Regional Security Initiative (CARSI) and enhance the impact of complementary United States Government non-CARSI citizen safety and rule of law programs. Countries in the region are increasing coordination through the Central American Integration System, a combined effort to promote citizen security and economic prosperity, including programs aimed at thwarting the drug trade.

International documentation shows continued strengthening of illegal drug trafficking ties between South America and West Africa. West Africa is the closest point to South America for transatlantic purposes, and its close proximity to southern Europe provides a natural gateway to European drug markets. Porous borders, inadequate law enforcement, and corruption create a permissive environment for the illegal drug trade. West African linguistic connections among Brazil, Portugal, and Cape Verde may also contribute to narcotics trafficking.

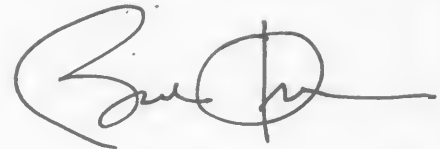
According to the U.S. assessment of cocaine movement, about a third of cocaine destined for Europe passed through West Africa in 2009. The 2011 U.N. World Drug Report also states there are reports that cocaine from Latin America is being stockpiled in some West African countries for future distribution to Europe in smaller quantities.

Despite the range of domestic challenges, including corruption, West African countries have begun to consider narcotics control as a top national security

priority. For example, in 2010, Liberian law enforcement successfully uncovered and interdicted a cache of cocaine valued at \$100 million. A number of U.S. projects in West Africa are aimed at improving drug interdiction and investigation capabilities. The assistance provided by international donors and organizations to West African governments to improve their counter-narcotics capability is increasingly urgent. The United States welcomes fresh impetus in 2010 and 2011 from the international community, especially the United Nations and the European Union, to make Africa a priority for drug-control assistance, to promote and protect the stability and positive growth of countries in Africa.

The stealth with which both marijuana and synthetic drugs such as MDMA (ecstasy) and methamphetamine are produced in Canada and trafficked to the United States makes it difficult to measure the overall impact of this smuggling. However, a special report prepared in May 2011 by the U.S. Drug Enforcement Administration states that "the threat posed by MDMA trafficking from Canada to and within the United States is significant." For example, in April 2011, a seizure of 20 pounds of MDMA from a Canada-based trafficking group was made by U.S. law enforcement in Plattsburg, New York. The United States pledges a more robust engagement and dialogue with Canada to reduce the shared problem of illegal drug trafficking. The results of this bilateral redoubling of drug-control cooperation will be considered in the framework of next year's Presidential Determination.

You are hereby authorized and directed to submit this determination under section 706 of the FRAA, transmit it to the Congress, and publish it in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 15, 2011

Presidential Documents

Proclamation 8718 of September 21, 2011

National Hispanic-Serving Institutions Week, 2011

By the President of the United States of America

A Proclamation

To win the future and restore our position as the global leader in education, we must ensure all young Americans, regardless of background, have the opportunity to realize their full potential. As our Nation's largest minority group, Hispanics represent more than 11 million students in America's public elementary and secondary schools. During National Hispanic-Serving Institutions (HSIs) Week, we renew our commitment to strengthening and expanding opportunities in higher education for our next generation of Hispanic leaders.

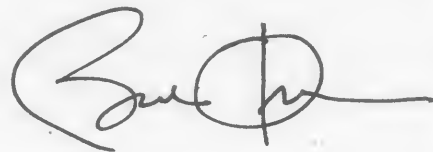
The hundreds of HSIs across our country are helping Hispanic students gain access to a quality higher education. These institutions play an essential role in equipping students with the skills necessary to thrive in the 21st century. Graduates of HSIs are leaders in science, technology, engineering, and math—fields that are crucial to America's competitiveness in an increasingly global economy. As hubs of research and innovation, they are integral to helping us achieve our goal of having the highest proportion of college graduates in the world by 2020.

Last year, I renewed and enhanced the White House Initiative on Educational Excellence for Hispanics to improve educational outcomes for Hispanic students from pre-school through higher education and adult education. We are working to expand access to pre-kindergarten programs and reduce high school drop-out rates for Hispanic students, while recruiting more Hispanic teachers and school leaders. Building on this foundation, we are committed to strengthening the capacity of HSIs and other higher education institutions serving Hispanic students to provide the best education possible.

This week, as we celebrate the immeasurable contributions HSIs have made to our Nation, we are reminded that in this new century, America will only be as strong as the opportunities we provide to all our people. Our future is inextricably tied to the future of the Hispanic community, and by working to strengthen HSIs, we will secure a brighter tomorrow for our children, helping them reach for the dream that has come to define our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 18 through September 24, 2011, as National Hispanic-Serving Institutions Week. I call on public officials, educators, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the tremendous contributions these institutions and their graduates have made to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

A handwritten signature in black ink, appearing to be Barack Obama's signature, written in a cursive style.

[FR Doc. 2011-24888

Filed 9-23-11; 11:15 am]

Billing code 3195-W1-P

Reader Aids

Federal Register

Vol. 76, No. 186

Monday, September 26, 2011

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

54373-54688.....	1	59003-59236.....	23
54689-54920.....	2	59237-59500.....	26
54921-55208.....	6		
55209-55552.....	7		
55553-55778.....	8		
55779-56090.....	9		
56091-56276.....	12		
56277-56634.....	13		
56635-56944.....	14		
56945-57624.....	15		
57625-57896.....	16		
57897-58088.....	19		
58089-58378.....	20		
58379-58714.....	21		
58715-59002.....	22		

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
8700.....	54919
8701.....	54921
8702.....	55207
8703.....	55209
8704.....	55211
8705.....	55549
8706.....	55551
8707.....	55779
8708.....	56939
8709.....	56941
8710.....	56943
8711.....	57617
8712.....	58375
8713.....	58377
8714.....	58707
8715.....	58709
8716.....	58711
8717.....	58713
8718.....	59499

Executive Orders:

13584.....56945

Administrative Orders:

Notices:

Notice of September 9,

2011.....56633

Notice of September

21, 2011.....59001

Memorandums:

Memo. of September

12, 2011.....57621

Presidential Determinations:

No. 2011-15 of

September 13,

2011.....57623

No. 2011-14 of August

30, 2011.....59493

No. 2011-16 of

September 15,

2011.....59495

5 CFR

843.....55213

Proposed Rules:

2635.....56330

7 CFR

762.....58089

1450.....56949

1735.....56091

Proposed Rules:

505.....57681

983.....57001

1033.....55608

1493.....57940

3201.....56884

8 CFR

103.....55502

214.....55502

274a.....55502

299.....55502

Proposed Rules:

204.....54978

205.....54978

245.....54978

9 CFR

77.....56635

88.....55213

Proposed Rules:

71.....57682

77.....57682

78.....57682

90.....57682

416.....58157

417.....58157

430.....58157

10 CFR

30.....56951

36.....56951

39.....56951

40.....56951

51.....56951

70.....56951

150.....56951

429.....57897

430.....57516, 57612, 57897

431.....59003

Proposed Rules:

Ch. I.....54986

2.....54392

30.....57006

31.....56124

50.....58165

52.....58165

100.....58165

150.....57007

429.....56661, 58346

430.....55609, 56125, 56126,

56339, 56347, 56661, 56678,

58346

431.....55834, 56126, 57007

810.....55278

12 CFR

48.....56094

202.....59237

207.....56508

215.....56508

223.....56508

228.....56508

238.....56508

239.....56508

261.....56508

261b.....56508

262.....56508

263.....56508

264a.....56508

360.....58379

Ch. VI.....54638

Proposed Rules:
 225.....55288
 241.....54717
 704.....54991
 Ch. XII.....59066

14 CFR

17.....55217
 23.....55230
 25.....54923, 57625, 57627
 33.....55553, 56097
 39.....54373, 54926, 55781,
 55783, 55785, 56277, 56279,
 56284, 56286, 56290, 56637,
 57630, 57900, 58094, 58098,
 59008, 59011, 59013, 59240
 71.....54689, 54690, 55232,
 55553, 55554, 55555, 56099,
 56966, 56967, 56968, 57633,
 57634, 57902, 58715, 59013
 91.....57635
 93.....58393
 97.....55233, 55235, 56969,
 56971
 119.....57635
 125.....57635
 133.....57635
 137.....57635
 141.....57635
 142.....57635
 145.....57635
 147.....57635

Proposed Rules:
 23.....55293
 39.....54397, 54399, 54403,
 54405, 55296, 55614, 56680,
 58416, 58722, 59067
 71.....55298, 56127, 56354,
 56356, 58726, 58727, 58728,
 59306
 252.....57008
 382.....59307

15 CFR

730.....58393
 732.....58393
 734.....58393
 736.....58393
 738.....54928, 58393
 740.....54928, 56099, 58393
 742.....56099, 58393
 743.....58393, 58396
 744.....58393
 745.....54928
 746.....58393
 747.....58393
 748.....54928, 58393, 58396
 750.....58393
 752.....58393
 754.....58393
 756.....58393
 758.....58393
 760.....58393
 762.....58393
 764.....58393
 766.....58393
 768.....58393
 770.....58393
 772.....58393, 58396
 774.....56099, 58393, 58396
 922.....56973

Proposed Rules:
 806.....58420

16 CFR

2.....54690

310.....58716
 1332.....59014
Proposed Rules:
 Ch. II.....57682
 1221.....58167

17 CFR

5.....56103
 30.....59241
 49.....54538
 200.....57636, 58100
 232.....58100
 239.....55788
 240.....54374, 58100
 243.....55788, 58100
 269.....55788
 271.....55237
 274.....55788
Proposed Rules:
 23.....58176
 37.....58186
 38.....58186
 39.....58186
 Ch. II.....56128
 270.....55300, 55308

18 CFR

40.....58101, 58716
Proposed Rules:
 39.....58424
 40.....58424, 58730
 284.....58741

19 CFR

102.....54691
 351.....54697

20 CFR

404.....56107
 416.....56107
 422.....54700
Proposed Rules:
 404.....56357
 416.....56357

21 CFR

Ch. I.....58398
 25.....59247
 173.....59247
 175.....59247
 177.....59247
 178.....59247
 182.....59247
 184.....59247
 520.....59023
 522.....57905, 57906
 556.....57906, 57907
Proposed Rules:
 50.....54408
 56.....54408
 73.....55321
 352.....56682
 1140.....55835
 1308.....55616

24 CFR

Proposed Rules:
 985.....59069

25 CFR

Proposed Rules:
 Ch. III.....54408, 57683

26 CFR

1.....55255, 55256, 55746,

56973
 301.....55256
 602.....55746
Proposed Rules:
 1.....54409, 55321, 55322,
 57684
 300.....59329

28 CFR

Proposed Rules:
 16.....57940
 524.....57012
 570.....58197

29 CFR

4022.....56973
 4044.....56973
Proposed Rules:
 570.....54836
 579.....54836
 1602.....57013

30 CFR

Proposed Rules:
 250.....56683
 1202.....55837, 55838
 1206.....55837, 55838

31 CFR

210.....59024
 240.....57907
Proposed Rules:
 1.....55839

32 CFR

199.....57637, 57642, 57643
 256.....57644
 311.....57644, 58103
 706.....58399
 1907.....59031
 1908.....59032
 1909.....59034
Proposed Rules:
 199.....57690, 58199, 58202,
 58204
 1900.....59071
 1901.....59073

33 CFR

100.....55556, 55558, 55561,
 57645
 117.....55563, 59036
 165.....54375, 54377, 54380,
 54382, 54703, 55261, 55564,
 55566, 55796, 56638, 56640,
 57910, 58105, 58108, 58110,
 58112, 58401

34 CFR

Subtitle B.....59036
 Ch. II.....59036
Proposed Rules:
 Subtitle B.....59074
 Ch. II.....59074

36 CFR

242.....56109
 261.....58403
Proposed Rules:
 7.....55840

37 CFR

1.....59050, 59055
Proposed Rules:
 2.....55841

7.....55841

38 CFR

17.....55570
 51.....55570

39 CFR

20.....55799
 111.....54931

Proposed Rules:

121.....58433
 3001.....59085
 3055.....55619

40 CFR

52.....54384, 54706, 55542,
 55544, 55572, 55577, 55581,
 55774, 55776, 55799, 56114,
 56116, 56641, 57106, 58114,
 58116, 58120, 59250, 59252,
 59254
 63.....57913
 85.....57106
 86.....54932, 57106
 116.....55583
 124.....56982
 132.....57646
 144.....56982
 145.....56982
 146.....56982
 147.....56982
 174.....57653
 180.....55264, 55268, 55272,
 55799, 55804, 55807, 55814,
 56644, 56648, 57657
 281.....57659
 300.....56294, 57661, 57662,
 58404
 302.....55583
 600.....57106
 704.....54932
 710.....54932
 711.....54932
 1033.....57106
 1036.....57106
 1037.....57106
 1039.....57106
 1065.....57106
 1066.....57106
 1068.....57106

Proposed Rules:

52.....54410, 54993, 55325,
 55621, 55842, 56130, 56132,
 56134, 56694, 56701, 56706,
 57013, 57691, 57696, 57846,
 57872, 58206, 58210, 53570,
 58748, 59087, 59089, 59090,
 59334, 59338, 59344, 59345
 81.....54412, 58210, 59345
 98.....56010
 180.....55329
 260.....55846
 261.....55846
 271.....56708
 300.....56362, 57701, 57702
 721.....55622
 745.....56136

41 CFR

300-3.....55273
 301-2.....55273
 301-10.....55273
 301-11.....55273
 301-52.....55273
 301-70.....55273
 301-71.....55273

Proposed Rules:	137	55847	217	58152	571	55825, 55829
128-1	138	55847	219	58137	Proposed Rules:	
	139	55847	227	58144	10	55334
42 CFR	140	55847	232	58137	27	59307
412	141	55847	236	58155	Ch. II	55622
413	142	55847	237	58137	269	55335
414	143	55847	241	58152	Ch. III	54721
417	144	55847	243	58137	571	55859
422	381	57941	252	57671, 57674, 58137, 58138, 58140, 58142, 58144	633	56363
423	382	57941	Proposed Rules:			
455	501	58227	1	55849	50 CFR	
476	540	58227	2	55849	17	54711, 58868, 58954
Proposed Rules:	47 CFR		4	55849	20	54658, 54676, 58682, 59271, 59298
5	0	56657, 59192	12	55849	32	56054, 59304
493	1	55817	14	55849	100	56109
43 CFR	8	59192	15	55849	223	58868
3000	15	56657	19	55849	224	58868
	25	57923	22	55849	300	59304
44 CFR	54	56295	26	55849	600	59304
64	64	58412, 59269	52	55849	622	56659, 59063
	73	55585, 55817, 56658	53	55849	635	56120
65	76	55817	1852	57014	648	54385, 56322, 56985
Proposed Rules:	79	55585, 56658	49 CFR		654	59064
67	90	54977	37	57924	660	54713, 56327, 58720
	300	56984	38	57924	665	54715
	Proposed Rules:		105	56304	679	54716, 55276, 55606, 57679, 58156, 58414, 59064
45 CFR	1	54422	106	56304	Proposed Rules:	
154	63	56362	107	56304	17	54423, 55170, 55623, 55638, 56381, 57943, 58441, 58455, 58650
Proposed Rules:	48 CFR		130	56304	300	55343
46	2	58122	171	56304	622	54727, 58455, 59102, 59371, 59373, 59375, 59377
160	Ch. 2	58137	172	56304	635	57709
164	201	58136, 58137	173	56304	640	54727, 59102
46 CFR	203	57671	174	56304	648	57944
160	204	58138, 58140	176	56304	660	54888, 55344, 55865, 57945
Proposed Rules:	209	57674, 58137	177	56304	679	55343
2	211	58142	213	55819		
8	212	58137, 58138, 58144	393	56318		
15	213	58149	523	57106		
28	215	58137, 58150	534	57106		
136	216	57674, 57677	535	57106		

LIST OF PUBLIC LAWS

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H.R. 1249/P.L. 112-29
Leahy-Smith America Invents Act (Sept. 16, 2011; 125 Stat. 284)

H.R. 2887/P.L. 112-30
Surface and Air Transportation Programs Extension Act of 2011 (Sept. 16, 2011; 125 Stat. 342)

Last List August 17, 2011

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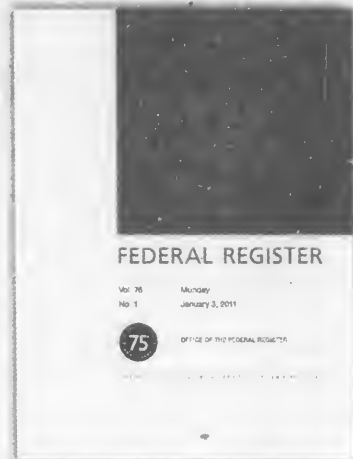
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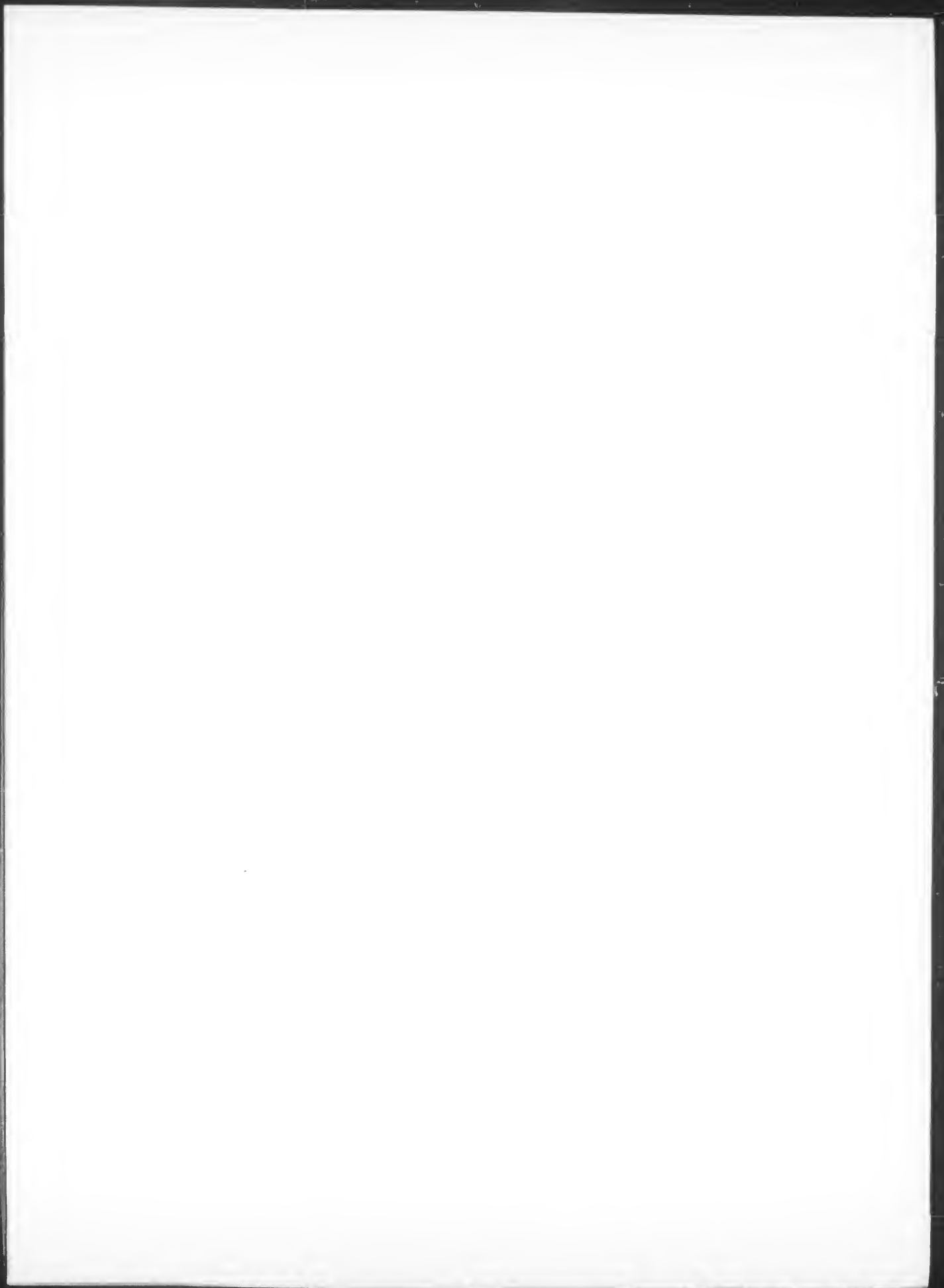
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